

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of order:09.09.2025**

NAME OF THE BUILDER		M/s Shree Vardhman Infrahomes Pvt. Ltd.	
PROJECT NAME		"Shree Vardhman Flora"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1869/2024	Parul Sharma V/s M/s Shree Vardhman Infra homes Pvt. Ltd.	C: Sh. Stephen Nelson, Advocate R: Yash Proxy
2.	CR/1982/2024	Ms. Gulshan Mahta V/s M/s Shree Vardhman Infra homes Pvt. Ltd.	C: Sh. Stephen Nelson, Advocate R: Yash Proxy

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

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Shree Vardhman Flora" being developed by the same respondent/promoter i.e., M/s Shree Vradhman. The terms and conditions of the builder buyer agreement and allotment letter against the allotment

of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below.

Project name and location			Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram		
S.no	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Due date of possession	Sale consideration and amount paid
1.	CR/1869/2024	1102, Tower, B4, 1950 sq.ft. (Page 14 of complaint)	14.02.2012	31.11.2015	Rs. 42,65,625/- Rs. 57,01,366/-
2.	CR/1982/2024	404, tower B2, 1875 sq.ft. (page 14 of complaint)	12.04.2012	31.11.2015	Rs. 63,44,494/- Rs. 60,94,355/-

4. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1869/2024 titled as Parul Sharma Vs M/s Shree Vardhman Infrahome Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Unit and project related details.

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

S. No.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of the Licensee	Moti Ram
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 88 of 2017 dated 23.08.2017 Valid upto 30.06.2019
7.	Unit no.	1102, Tower B4 (Page 14 of complaint)
8.	Unit area admeasuring	1950 sq. ft. (super area) (Page 14 of complaint)
9.	Date of application from	31.03.2011 (page 29 of complaint)
8.	Date of buyer agreement	14.02.2012 (Page 26 of complaint)
9.	Possession clause	14 (a) Possession <i>The construction of the flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months on receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with</i>

		<i>construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex.</i> (Emphasis Supplied) (Page 31 of complaint)
10.	Date of commencement of construction	31.05.2012 (page 58 of complaint)
11.	Due date of possession	31.05.2015 + 6 months = 31.11.2015
12.	Basic sale consideration	Rs.42,65,625/- (as per BBA page 28 of complaint)
13.	Amount paid by the complainant	Rs.57,01,366/-
14.	Occupation certificate	02.02.2022 (page 16 of reply)
15.	Offer of possession	18.04.2022 (page 36 of reply)
16.	Reminder Letters	21.06.2022 and final reminder letter dated 07.05.2024 (Page 32 and 33 of reply, respectively)
17.	Cancellation Letter	19.06.2024 (On failure to pay outstanding dues) (page 34 of reply)

B. Facts of the complaint

7. The complainant has made the following submissions: -

- I. That on dated 27.03.2011 when the complainant had visited to the office of respondent believing in the advertisements and specific representations of the respondent's representatives that since the project has already started, the said project shall be delivered by the 2015 to be true, agreed to filling in the application form with an advance money of Rs. 1,50,000/- dated 27.03.2011 and Rs. 2,00,000/- on dated 09.04.2011 by giving cheques as a means of showing complainant's personal interest in the above said project.

- II. That the respondent has claimed that they have obtained License from Director General, Town and Country Planning, Haryana for development of a residential Group Housing Colony on the said land and building plans have already been approved. It was assured that there would be no price escalation of any sort and there would be no hidden charges as well.
- III. That the respondent has further claimed that the unit area and the location of the unit are based on approved building plans and in case of any change in plans due to technical reasons or minor deviation during construction they may vary marginally for which the buyer/complainant will be duly notified in time.
- IV. That on dated 30.11.2011 complainant was informed about the allotment of the flat no. B4-1102 by respondent vide allotment letter Dated 30.11.2011 and on the same day complainant paid the advance money of Rs. 5,25,093/- by giving cheque.
- V. That the respondent in terms of the application of the complainant executed the agreement to sell dated 14.02.2012 and agreed to the terms and conditions as set forth under this agreement. The complainant entered into the agreement to sale for a unit B4-1102 in "Shree Vardhman Flora" in Sector-90, Gurugram and the agreement was made at New Delhi on 14.02.2012 between M/s. Shree Vardhman Infra Homes Private Limited and Mrs. Parul Sharma (complainant).
- VI. That as per agreement read with schedule of payment the complainant was to make payments as per the schedule provided by them and till date the complainant has already paid a total of Rs. 57,01,366/- against a total cost of Rs. 57,01,366/- which comprises 100% of the total payment as demanded by the respondents and there is no default or delay in remittances by the complainant.

- VII. That the complainant has paid all the demanded amounts towards the cost of the flat till date including costs towards other facilities. However, the possession still is not given so far by the respondent company despite an elapse of more than 142 months of the start of the construction. The respondents have miserably failed to perform their obligations as per the agreed terms.
- VIII. That as per BBA the respondent committed under the agreement to sell that it is their sincere endeavour to give possession of the flat to the complainant within 36 months in respect to the project from the date of the start of the construction i.e. 14.05.2012. Thus, the commitment of the respondent to hand over the possession of the Unit to the complainant was on or before 14.05.2015.
- IX. That the respondent has charged monies towards installation of firefighting equipment which he has neither purchased nor installed so far and the respondent has also charged monies for the club house but has not laid even the foundation stone for the same. Since the complainant has opted for construction link plan the builder is duty bound to charge amounts for the services and equipment for which he has either incurred expenses or is about to incur the estimated expense and not for the services and equipment which he has not provided till date.
- X. That respondent without obtaining occupation/completion certificate and other necessary permissions from fire department etc. offered the possession of the said flat to the complainant vide letter "Offer of possession for fit-outs of flat no. B4-1102, in Shree Vardhman Flora, Sector-90, Gurugram" dated 22.07.2021 in a clever manner. The said offer is illegal and not tenable in the eyes of law as the government issues

Occupation Certificate to a dwelling unit only after it confirms to all safety measures and is habitable.

- XI. That in the name of offering possession the respondent company has an oblique motive to achieve i.e., of charging undue amounts thereby causing undue loss to the complainant and undue profits to themselves. In the said letter the respondent also raised demands towards escalation charges which applicant is not liable to pay since besides there being an agreement towards no escalation charges if in case any escalation has taken place (though denied) the same has occurred because of the fault of the respondent and not because of any of the acts of the complainant. Likewise, the respondent company is making demand in various heads for which the amounts could be charged if the work is either completed or is initiated, for the reason that it being a construction linked plan and in such a plan there is no scope for charging anything which would be provided in remote future.
- XII. That in terms of personal visit to the project site by the complainant in the month of January, 2024 the respondent failed to keep their promise completing the project in all respects and for obtaining of the Occupation Certificate in respect thereof. The respondent keeps on giving lame excuses for the delay and for raising illegal demands which is unjustified and illegal.
- XIII. That the complainant had been repeatedly sending emails regarding the delayed possession charges and compensation but no one from the respondent company responded to those emails.
- XIV. That thereby the respondent failed to deliver the timely possession as assured and all the representations and assurances of the respondent have now turned all false and fraudulent and it is quite evident that the respondent have been wrongfully availing the hard-earned monies of the

complainant which are complainant's life time savings and the possession of flat still looks distant.

- XV. That the complainant had been repeatedly sending emails and visiting the site office but to no avail against the economic might and superior position of the respondent company as none from the respondent informs anything about the possession of the said flat and her hard-earned monies and the representatives just keep passing the buck.
- XVI. That due to the breach of obligations and wrongful conduct of the respondent the complainant has to suffer doubly on the one hand she has not been delivered the unit noted above secondly the respondent has fraudulently charged from the complainant the monies for services and equipment's which he has not purchased and installed such as electrical and firefighting equipment's and club-house services etc.
- XVII. That all the sincere and bonafide requests of the complainant have fallen on deaf ears and the respondent is harassing and humiliating the complainant by not providing the possession of the flat as per the terms of the BBA and there is an inordinate delay in completing the project.
- XVIII. That on the basis of the above submission and facts, it can be concluded that the respondent has miserably failed in completing the construction of the building and in handing over the possession of the unit of the complainant in accordance with the agreed terms and have breach the agreed terms between the parties by resorting to unfair practices in a brazen manner. Since the applicant has invested her lifetime savings for purchasing this Flat the complainant is not interested in withdrawing from the Project. As per obligations on the promoter under section 18(1) proviso, the promoters are obligated to pay the complainant interest at the prescribed rate for every month of delay till the actual handing over of the possession. Promoter has not fulfilled his obligation. The

complainant reserves her right to seek compensation from the promoter for which the complainant shall make separate application to the adjudicating officer, if required. Hence this complaint.

C. Relief sought by the complainants:

8. The complainant has sought following relief(s):
 - i. Direct the respondent to deliver the possession of the flat immediately.
 - ii. Direct the respondent to pay delayed possession charges with interest for every month of delay at prevailing rate of interest, as per the provisions of law.
 - iii. Direct the respondent to charge escalation charges of Rupees 136500/-.
 - iv. Direct the respondent not to charge 90000/- for power backup and Rupees 250000/- for electrical meter charges and to charge for the same on actual basis.
9. 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

10. The respondent has contested complaint on the following grounds:
 - i. That in the peculiar facts of this case any relief even under section 18 of the RERA cannot be granted to the complainant for absence of any flat buyer agreement between the parties. For invocation of Section 18 and claiming relief thereunder existence of an "Agreement to Sell" is sine quo non, however in the present case no flat buyer agreement was ever executed between the parties. It is further stated that it is the complainant only who is responsible for non-execution of the agreement to sell. The respondent consequent upon allotment of the flat prepared the agreement to sell on 14/02/2012 and called upon the complainant to collect the same and return after signatures thereon. The complainant collected the copies of the said agreement to sell on 21.08.2012 but

thereafter did not return the same to the respondent company. As such the respondent could not sign the same. Be that as it may, there is no flat buyer agreement/agreement to sell between the parties and on this ground alone the complaint deserve to be dismissed.

- ii. That the allotment made in favour of the complainants was cancelled/terminated on 19.06.2024. As such after 19.06.2024 the complainant ceased to be an allottee of the project and was not covered under the definition of "allottee" as given under Section 2(d) of the RERA. The complainants as such cannot proceed under RERA and the present complaint is liable to be dismissed on this ground alone.
- iii. That the complainant has not approached this Hon'ble court with clean hands and she has deliberately concealed the relevant and material facts from this honourable court. The complainant has deliberately concealed that the possession of the flat in question was offered to her by the respondent after receiving the Occupancy Certificate and that they did not make the due payment as per agreed terms and that the respondent company cancelled the allotment made in their favour due to continuous default on their part and non-payment of the outstanding dues. On this ground alone, the complainants do not deserve any indulgence from this honourable court.
- iv. That even section 18 of the RERA Act is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came in to force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein.

- v. That the construction of the entire project has been completed and Director Town and Country Planning, Haryana has also granted Occupation Certificate dated 02.02.2022 to the respondent with regard to the project in question.
- vi. That the construction of the project has been completed in 3 phases. The first phase consisting of towers B1(Block - 1), B2 (Block - 2) and B3 (Block - 3) was completed in November 2019 and the application for grant of Occupation Certificate for that phase was made on 18.11.2019. The second phase consisting of Tower B4 (Block - 5), Tower C1 (Block - 6), Tower C2 (Block - 7) was completed in April, 2021 and the application for grant of OC for that phase was made on 16/.04.2021. The third phase consisting of Tower A1 (Block - 4) and Tower B5 (Block - 8) was completed in June, 2021 and the application for grant of OC for that phase was made on 18.06.2021. As all three applications were pending with the department, the respondent/licensee was advised to move a single consolidated application for all the phases for the sake of convenience and early grant of OC. As such the consolidated application for grant of OC was made on 19.07.2021 for the complete project and the OC was granted on 02.02.2022. The flat in question is situated in tower B 4 which was completed in April 2021 and the application for OC was submitted on 16.04.2021 and the OC was received on 02.02.2022 as aforesaid.
- vii. That the allotment of the flat in the project in question. In pursuance to the said application, the respondent vide its letter dated 04.11.2011 invited the complainant to choose the apartment of her choice. The complainant vide letter dated 01.12.2011 choose apartment no. B4/1102 and as such the respondent vide its allotment letter dated 06.12.2011 allotted the said apartment to the complainant. Thereafter, the complainant on 21.08.2012 collected copies of the flat buyer agreement

from the office of OP. She was supposed to return the same after her signatures thereon. However, she did not return the same to the respondent.

- viii. That the respondent offered possession of the flat in question vide offer of possession letter dated 18.04.2022. The said offer of possession was sent to the complainant through post on 20/04/2022, however the complainant did not come forward to make payment of the outstanding dues and to take possession of the Flat. The respondent sent a reminder letter dated 21.06.2022 whereby the complainant was again reminded to take possession of the flat after making the due payments. Again, the complainant did not respond. Thereafter, the complainant personally collected a copy of the said offer of possession letter from the office of the respondent on 03.01.2023. But again, she neither paid the outstanding balance nor otherwise responded to the same did not respond. Thereafter, the respondent company again through its letter dated 07.05.2024 gave a final reminder to the complainant to make the payment of the outstanding dues and take possession and the complainant was were also notified that in case the needful was not done within 7 days the allotment of the unit would be cancelled. The complaints did not respond to the said final reminder also. As such the respondent company having left with no other alternative, vide its cancellation letter dated 19.06.2024 cancelled the allotment made in favour of the complainant and she was advised to return all the original documents of the flat in question. The allotment of the flat made in favour of the complainant as such stood cancelled/terminated on 19.06.2024 and as such the complainants now cannot seek possession of the Flat. Upon receipt of OC, the possession of the Flats was offered to all the eligible allottees and majority of them have already taken possession of

- their respective units. The complainant however dithered and the respondent had to cancel the unit as aforesaid.
- ix. That the buyer agreement which was to be executed between the parties, no definite or firm date for handing over possession to the allottee was given. However, clause 14 (a) provided a tentative period of 42 months within which the project/flat was to be completed and application for OC was to be made to the competent authority. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that DTCP, Haryana would take in granting the OC, therefore the period for handing over of possession was not given in the agreement. In this particular case the flat/tower in question was completed in June, 2021 and the Occupancy certificate in respect thereof was applied on 18.06.2021, as such the respondent cannot be held liable for payment of any interest and/or compensation for the period beyond 18/06/2021. Neither contractually nor in law the respondent can be held liable for the period taken by the concerned government department for granting the OC. Though the construction of the tower in question i.e., tower no. B-4 commenced on 17/11/2012. However, it is submitted that as per the FBA, the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The last approval being consent to establish was granted by the Haryana State Pollution Control Board on 15.05.2015.
- x. That as per Clause 14(a), the obligations of the respondent to complete the construction within the tentative time frame mentioned in said clause was subject to timely payments of all the installments by the complainant and other allottees of the project. As various allottees and even the

complainant failed to make payments of the installments as per the agreed payment plan, the complainant cannot be allowed to seek compensation or interest on the ground that the respondent failed to complete the construction within time given in the said clause. The obligation of the respondent to complete the construction within the time frame mentioned in FBA was subject to and dependent upon time payment of the installment by the complainant and other allottees. Many buyers/allottees in the said complex, including the complainant, committed breaches/defaults by not making timely payments of the installments. As such no allottee who has defaulted in making payment of the installments can seek refund, interest or compensation under Section 18 of RERA Act or under any other law.

- xi. That the tentative period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/restrictions from authorities, non-availability of building material or dispute with construction agency/work force and circumstances beyond the control of the respondent company and timely payment of installments by all the buyers in the said complex including the complainant. As aforesaid many buyers/ allottees in the said complex, including the complainant, committed breaches / defaults by not making timely payments of the installments.
- xii. That the construction of the entire project could not be completed within the time estimated at the time of launch of the project due to various reasons beyond the control of the respondent, including inter-alia restraints orders passed by various courts and authorities from time to time restraining constructions activities, force majeure events such as Covid-19 pandemic, non-availability of labour, material and disruption of supply chains, liquidity crisis owing to global economic crisis that hit the

real estate sector in India very badly which is still continuing, defaults committed by allottees, depressed market sentiments leading to a weak demand, etc. The respondent cannot be held responsible for the alleged delay in completion of construction. The respondent is genuine and responsible developer who fought against all odds and has already completed the project.

11. All other averments made in the complaint were denied in toto.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

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

E. I Territorial Jurisdiction:

14. 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:

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

Section 11(4)(a)

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

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

Section 34-Functions of the Authority:

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

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to deliver the possession of the flat immediately.

17. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant.
18. The Authority observes that the allotment of booked unit was cancelled by the respondent on 19.06.2024 due to non-payment of amount as per demand issued along with offer of possession. At the time of cancellation of allotment of unit, respondent was already in receipt of Rs.57,01,366/- which is more than the basic sale price of unit. The promoter's conduct in asking the complainant to meet additional demands was not justifiable as the project was delayed by 7 years and instead of adjusting delay compensation, the promoter has demanded escalation charges. The respondent cannot take advantage of his own wrong by delaying the project on one hand and demanding escalation charges on the other. In view of the above, this Authority holds the cancellation to be bad in law and the respondent is directed to reinstate the subject unit.
19. The Authority observes that the respondent-promoter has obtained OC of the said project from the competent authority on 02.02.2022. Section 17(1)

of the Act 2016 obligates the respondent-promoter to handover the physical possession of the subject unit to the complainant complete in all aspects as per specifications mentioned in BBA and thereafter the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.

20. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
21. Additionally, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

F.II. Direct the respondent to pay delay possession charges with interest for every month of delay at prevailing rate of interest as per the provisions of law.

22. 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."

23. Clause 14(a) of buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 14(a)

The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months or receipts of sanction of building plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex....."

(Emphasis supplied)

24. **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 and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was initially to be commenced from 31.05.2012. Therefore, the due date of possession comes out to be 31.11.2015 including grace period of six months being unqualified and unconditional.
25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.

26. 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.
27. 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., 09.09.2025 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
28. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
30. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 14.02.2012, the possession of the said unit was to be delivered within a period 36 months from the date commencement of construction i.e. 31.05.2012 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 31.11.2015. In the present complaint the complainants were offered possession by the respondent on 18.04.2022 after obtaining occupation certificate dated 02.02.2022 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 14.02.2012 executed between the parties.
31. 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 02.02.2022. The respondent offered the possession of the unit in question to the complainant only on 18.04.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant 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 the expiry of 2 months from the date of offer of possession (18.04.2022) which comes out to be 18.06.2022.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 31.11.2015 till expiry of 2 months from the date of offer of possession (18.04.2022) i.e., up to 18.06.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rule.

F.III Direct the respondent not to charge escalation charges of Rs.1,36,500/-

33. The complainant took the plea that the respondent-builder has assured that there will be no price escalation of any sort and there will be no hidden charges. The respondent-builder submits that it has not levied any hidden charges. The undertaking to pay the above-mentioned charges was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder:-

"Clause 9.

Under normal circumstances no escalation in the cost of construction shall be charges. However, under exceptional force majeure circumstance, e.g. substantial increase in the price of cement, steel, metal, building material, the company may charge escalation in the cost of construction of the flat as per practice and norms adopted by PWD/CPWD".

34. It is pertinent to note that the due date for handing over possession in terms of the builder buyer agreement dated 14.02.2012 was 31.11.2015

(including grace period of 6 months). The delay in handing over possession of the unit was due to the respondent's own failure, which in turn may have led to the escalation of cost. It would be unjust to attribute the delay to the complainants in any way. In light of the above, the imposition of escalation charges is not justified and cannot be levied upon the complainant and is therefore set aside.

F.IV Direct the respondent not to charge Rs. 90,000/- for power backup and Rs. 2,50,000/- for electrical meter charges and to charge for the same on actual basis.

35. The above-mentioned relief was not pressed by the complainant's counsel during the course of arguments. The Authority is of the view that the complainant's counsel does not intend to pursue the relief sought by the complainant. Moreover, in terms of clause 2(h) & (i) of the buyer's agreement, it has been clearly stated that electric connection charges, electricity consumption meter cost, etc. and the cost of installing power backup facility in the project for flat/apartment shall be charged additionally. In view of the above, the said relief is declined.

G. Directions of the Authority

36. 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 cancellation of the unit of the complainant is hereby set aside and the respondent is directed to reinstate the subject unit.
- ii. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 31.11.2015 (*inadvertently mentioned as 18.04.2022 in proceeding dated 09.09.2025*) till expiry of 2 months from the date of offer of possession (18.04.2022) (*inadvertently mentioned*

as 19.06.2024 in proceeding dated 09.09.2025) i.e., up to 18.06.2022 only. 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

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days. The respondent is directed to handover the physical possession of the unit within 30 days to the complainant/allottee along with execution of conveyance deed within next 30 days after payment of stamp duty charges by the complainant.
 - v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement also no escalation charges shall be levied by the respondent upon complainants.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
39. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram



(Arun Kumar)
Chairman

Dated: 09.09.2025