

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

Complaint no.: **596 of 2024**
Date of filing of complaint: **14.03.2024**
Date of order: **30.10.2025**

Complainant
Harsh Kharbanda
R/o: 125, Second floor, Chander Lok,
Pitampura, New Delhi-110034

Versus

Respondent
Emaar MGF Land Ltd. presently known as
Emaar India Ltd.
Regd. office at: ECE House, 28, Kasturba Gandhi
Marg, New Delhi-110001
Corporate office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28 Gurugram-122002

CORAM: **Member**
Shri Phool Singh Saini

APPEARANCE: **Complainant**
Ms. Shweta (Advocate)
Respondent
Sh. Harshit Batra and Ms. Tanya (Advocates)

ORDER

1. This 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 provision of the Act or the Rules and regulations made

thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Colonnade", Sector 66, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	2.25 acres
4.	DTCP license no.	163 of 2008 dated 19.08.2008 valid up to 18.08.2020
5.	Name of licensee	Logical Developers Pvt. Ltd
6.	RERA Registered/ not registered	156 of 2017 dated 28.08.2017 valid up to 31.01.2028
7.	Unit no.	CHC R-UGF-018, Upper Ground Floor (As per page no. 34 of the complaint)
8.	Unit area admeasuring	509 sq. ft. (Super area) (As per page no. 34 of the complaint)
9.	Allotment letter	05.05.2015 (As per page no. 30 of the complaint)
10.	Date of buyer's agreement	29.07.2016 (As per page no. 33 of the complaint)
11.	Possession clause	<p>16. POSSESSION</p> <p><i>(a) Time of Handing over the possession:</i></p> <p><i>The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 or from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly</i></p>

		<p>complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession") (As per page no. 61 of the corrected reply)</p>
12.	Date of start of construction	29.05.2017 (As per page no. 98 of the corrected reply)
13.	Due date of possession	February,2020 (Note: Due date to be calculated 42 months from August, 2016 being earlier)
14.	Total consideration sale	Rs.44,24,737/- (As per payment plan on page no. 45 of the complaint) Rs.48,91,369/- (including IFMS and service taxes) (As per SOA dated 01.04.2024 on page no. 130 of the corrected reply)
15.	Amount paid by the complainant	Rs.11,66,629/- (As per SOA dated 01.04.2024 on page no. 130 of the corrected reply)
16.	Payment reminder letters	06.05.2019 & 21.05.2019 (As per page no. 114 & 115 of the corrected reply)
17.	Occupation Certificate	31.03.2022 (As per page no. 127 of the corrected reply)
18.	Offer of possession	Not offered
19.	Cancellation notice	24.11.2023

	(As per page no. 120 of the corrected reply)
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B. Facts of the complaint:

3. The complainant has made the following submissions:
- I. That the complainant is a law-abiding citizen of India and currently residing at 125, Second floor, Chander Lok, Pitampura, New Delhi-110034.
 - II. That the respondent company announced the takeover of the commercial colony project "Colonnade" from "Baani The One" in 2012, located at Sector 66, District Gurugram, Haryana, under license no. 153 of 2008 issued by DTCP, Haryana.
 - III. That the complainant initially booked a unit from Baani Group, which was later transferred to the respondent, confirmed by the respondent via a communication dated 17.05.2012
 - IV. That relying on representations and assurances by the respondent, the complainant was allotted a unit in the project on 05.05.2015, confirmed via email of provisional allotment.
 - V. That the builder buyer's agreement was executed between the complainant and the respondent on 29.07.2016, with a commitment to hand over possession by January 2020, as per clause 16(a)(i) of the BBA.
 - VI. That the complainant made timely payments towards all demands raised by the respondent between the time of booking and 2020.
 - VII. That the respondent failed to deliver possession by the agreed-upon date and did not provide reasons despite multiple attempts by the complainant to contact them. Despite attempts to contact the respondent, they never responded nor did inform the complainant

- about the status of the project without addressing the complainant's concerns.
- VIII. That upon inquiry, the respondent informed the complainant that their unit had been cancelled arbitrarily vide notice dated 31.08.2023.
- IX. That the carpet area was never disclosed to the complainant, and the location and floor of the unit were changed without prior approval, leading to financial loss and disappointment.
- X. That the complainant paid PLC charges of Rs.700 per sq. ft., which became futile due to the changes in the layout and the floor made by the respondent. The demands for delayed payment along with interest (DPC), maintenance charges and other fees were imposed arbitrarily, causing harassment to the complainant.
- XI. That the respondent failed to provide satisfactory responses regarding the status of the agreement, construction progress, and delivery of possession despite repeated inquiries by the complainant.
- XII. That the complainant was not permitted to visit the construction site despite several requests, leading to loss of time and money invested. Due to the respondent's actions, the complainant approached the Hon'ble Authority seeking redressal of grievances and relief.
- XIII. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from the allottee's point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of

accountability and transparency as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

- XIV. That the complainant is the one who has invested his life savings in the said project and is dreaming of a unit for himself and the respondent has not only cheated and betrayed him but also used his hard-earned money for their enjoyment.
- XV. That the complainant after losing all the hope from the respondent company, having his dreams shattered of owning a shop & having basic necessary facilities in the vicinity of the Colonnade project and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance.
- XVI. That the present complaint is within the prescribed period of limitation. The complainant has not filed any other complaint before any other forum against the respondent and no other case is pending in any other court of law. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to set aside the cancellation of unit notice and also to not create any third-party rights on the said unit.
 - ii. Direct the respondent to accept the further amount due from the complainant.
 - iii. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.

- iv. Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession.
- v. Direct the respondent not to charge any penalty/ interest from the complainant & to corporate by providing the required documents.
- vi. Restrain the respondent from raising fresh demand for payment under any head.
- vii. Direct the respondent to refund the PLC charged, along with interest, as no preferential location has been given to the complainant.
- viii. Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.
- ix. To take the action against the respondent, as the respondent has misled the complainant by executing the buyer's agreement based on the super area and has never made any clarification on the actual carpet area through any communication till date.

D. Reply by the respondent:

- 5. The respondent has contested the complaint on the following grounds:
 - I. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 29.07.2016, as shall be evident from the submissions made in the following paras of the present reply.
 - II. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present

complaint. The complainant has refrained from taking the possession of the unit in question due to his own selfish motives, based on incorrect facts, interpretation and is now trying to take undue advantage of clerical mistakes.

- III. That the complainant is in default of his obligations under the agreement and as such has disentitled himself from claiming any relief under the said agreement.
- IV. That the complainant being interested in the real estate development of the respondent, known under the name and style of "Colonnade" at Sector 66, District Gurgaon approached the respondent to purchase the unit and upon his application for allotment of the unit was allotted unit no. UGF-018 on Upper Ground floor with super area 509 sq. ft. vide allotment letter dated 05.05.2015.
- V. That thereafter, a buyer's agreement dated 29.07.2016 was executed between the complainant and the respondent for unit 'CHC-R-UGF-018' whereas it was specifically mentioned in the annexure 5 of the buyer's agreement that the upper ground floor was approved as a 1st floor in the building plan, leading to change in nomenclature. According to the approved building plans there was some revisions/ modifications leading to the change in nomenclature of the floors from Lower Ground Floor (LGF), Upper Ground Floor (UGF), First Floor (FF) and Second Floor (SF) to Ground Floor (GF), First Floor (01), Second Floor (02) and Third Floor (03), respectively. Therefore, only the nomenclature of floor has been changed, the location of the units as well as physical level of the units are same. It is pertinent to mention that the BBA was consciously and voluntarily executed and the terms and conditions of the same are binding on the parties.

- VI. That being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. The remittance of all amounts due and payable by the complainant under the agreement as per the schedule of payment incorporated in the agreement was the essence.
- VII. That the complainant had defaulted/delayed in making the due payments, upon which, reminders and notices were also served to the complainant. That the *bonafide* of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and reminders to the complainant to ensure that the payments are made in a timely fashion.
- VIII. That the complainant is a habitual defaulter who has been in default of payments since the very beginning. The complainant had made last payment on 29.03.2019 i.e., at the stage of on casting of second basement roof slab after a delay of approx. 2 years and thereafter stopped making payment of the instalments. The complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent.
- IX. That by not making the due payments, not only has the complainant violated the agreement but also the provisions of the Act of 2016, under which the complainant was obligated to make payment and despite repeated reminders and various opportunities, miserably failed to do.
- X. That as the complainant failed to make timely payment of the instalments, the complainant was served a pre-cancellation notice

dated 26.07.2023 and 31.08.2023. The complainant was duly communicated that upon the failure to abide by the pre-cancellation letter and remittance of the balance sale consideration of the unit within 30 days from the date of receiving the notice, the respondent shall have the right to cancel the allotment of the complainant and forfeit the amount as per the terms and condition of the agreement. However, the complainant failed to abide by the pre-cancellation letters sent to him hence, the respondent was constrained to cancel the allotment of the complainant and the same was communicated to the complainant along with the calculation of forfeiture amount of the unit vide cancellation letter dated 24.11.2023.

- XI. That it is of essence to note that upon the non-payment by the complainant, the complainant was considered under default under clause 23 of the agreement, and upon the failure of the complainant to pay due amounts/instalments the respondent had complete right to terminate the allotment of the complainant under clause 15 of the agreement.
- XII. That accordingly, after termination of the allotment of the unit of the complainant, the complainant has been left with no right, title, interest, charge or lien over the unit. After the termination of the allotment of the unit of the complainant, solely due to the default of the complainant, the respondent is well within its right to forfeit the earnest money along the delayed payment interest till the date of termination and other non-refundable amount including the statutory dues paid against the unit.
- XIII. That no person should be granted the benefit of his own wrong is a settled principle of law, and is squarely applicable in the present case, where the default of complainant had led to termination of the

- unit. Hence, no benefit of any sort, including but not limited to delay possession charges should be granted to the complainant.
- XIV. That the facts and circumstances of the present case reveal that the complainant is not eligible for possession of the unit or any delay possession charges. The allotment of the complainant stands cancelled, thus, the present claim against the respondent-company is infructuous. Hence, the complaint is liable to be dismissed.
- XV. That without prejudice to the contentions of the respondent, it is most humbly submitted that the respondent has ensured its utmost *bonafide* and lawful conduct since the very beginning. There is no delay in the development of project, which was duly, timely, efficiently and effectively completed as per the agreed timelines. That as per clause 16 of the agreement, the respondent proposed to offer the possession of the unit within 42 months from August 2016 or date of start of construction, whichever is earlier, plus grace period of 4 months subject to the allottees having complied with all the terms and conditions of the agreement. It is submitted that the complainant has defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainant. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands.
- XVI. That the respondent was faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the

A handwritten signature in black ink, appearing to read "Ranvir Singh".

judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done.

- XVII. That additionally, even before the normalcy could resume, the world was hit by the covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention here that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete

curfew. During the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. It is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide order/direction dated 26.05.2020 on account of 1st wave of COVID-19 pandemic. The said lockdown was imposed in March, 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

- XVIII. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent-builder. It must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 17(ii), however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.
- XIX. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. Despite the default caused, the respondent applied for occupation certificate in respect of the said unit on 10.12.2021 and the same was thereafter issued on 31.03.2022. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as

the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project. In accordance with the above, the claim of the complainant is bound to be dismissed and cannot be entertained, in any circumstance, whatsoever.

6. 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 submission made by the parties.

E. Jurisdiction of the authority:

7. The objection raised by the respondent regarding rejection of complaint on ground of subject matter jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

8. 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. Finding on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various construction bans, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization of currency. But all the pleas advanced in this regard are devoid of merit. As the events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact the project being developed by the respondent and are to be considered

while fixing the timelines for completion of the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to set aside the cancellation of unit notice and also to not create any third-party rights on the said unit.**
- G.II Direct the respondent to accept the further amount due from the complainant.**

10. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.
11. In the present complaint, the complainant is seeking setting aside of cancellation dated 24.11.2023 and possession of the unit along with delayed possession charges.
12. In the instant complaint, the unit of the complainant was cancelled by the respondent vide cancellation notice dated 24.11.2023 on account of non-payment of outstanding dues. The counsel for the respondent vide proceedings of the day 28.08.2025 that the respondent is willing to recall the termination and to offer the possession subject to payment of outstanding.
13. In view of the above-stated facts, the cancellation notice dated 24.11.2023 is set-aside and the respondent is directed reinstate the allotted unit of the complainant within a period of 30 days from the date of this order.
14. The respondent is further directed to issue a revised SOA after the adjustment of delayed possession charges. The complainant is directed to pay the outstanding amount, after the adjustment of delayed possession charges in next 30 days from the date of issuance of revised

SOA. The interest on outstanding amount towards the complainant/allottee shall be levied by the respondent-promoter at an equitable rate of interest.

- G.III** Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.
- G.IV** Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession.
- G.V** Direct the respondent not to charge any penalty/ interest from the complainant.

15. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.
16. 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."

17. Clause 16(a) of buyer's agreement dated 29.07.2016 provides for handing over of possession and is reproduced below:

a) Time of Handing over the possession:

(i) The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession")

18. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within 42 months from August, 2016 with grace period of 4 months. Thus, the due date of possession comes to June, 2020. But as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, a grace period of six months has been allowed by the Authority. Therefore, the due date of possession comes to August, 2020.
19. **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.

20. 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.
21. 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., 30.10.2025 is @ 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

22. 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.
23. 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.
24. The counsel for the respondent vide proceedings of the day dated 30.10.2025 stated that the respondent is ready to give possession of the unit which was due in the year 2021 along with delayed possession charges subject to payment of outstanding amount.
25. The Authority has observed that the complainant has opted for a construction linked payment plan (page no. 74 of the complaint). As per the opted payment plan, the complainant has to pay 75% of the sale consideration till completion of the unit and remaining 25% on offer of possession. However, till date the complainant has paid Rs.11,66,629/- against the total sale consideration of Rs.48,91,369/- (including IFMS and service taxes) which amounts to 24% of the sale consideration. It clearly shows that the complainant has failed to make the payments as per the opted payment plan and on account of non-payment the unit was terminated on 24.11.2023.
26. Moreover, the occupation certificate of the project was obtained by the respondent on 31.03.2022 which depicts that the project was completed way back in 2022 only and it was on default on the part of the

complainant that no offer of possession was made by the respondent till date.

27. The due date of handing over of possession is August, 2020 but the occupation certificate was obtained on 31.03.2022 but no offer of possession was made till date as the unit was cancelled on account of non-payment by the complainant. However, now the respondent is willing to handover the possession and adjustment of DPC subject to payment to outstanding dues and the complainant also intends to continue with the project.
28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of handing over the possession till offer of possession after obtaining occupation certificate plus two months
29. In the present case, the default is on the part of allottee has also been established in para 25. Thus, the respondent shall pay interest for every month of delay from the due date of handing over the possession i.e., August, 2020 till obtaining occupation certificate (31.03.2022) plus two months i.e., 31.05.2022 (Inadvertently mentioned as till valid offer of possession in the proceedings of the day dated 30.10.2025) 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.



G.VI Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant.

G.VII Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.

30. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.
31. The Authority has gone through the apartment buyer's agreement dated 29.07.2016 and observed that as per payment plan (Annexure-III) on page no. 74 of the reply total sale consideration includes basic sale consideration, Preferential Location Charges (PLC), External Development charges (EDC), Internal Development charges (IDC) and IFMS. In clause 2.2(d) of the buyer's agreement, it is mentioned that due to change/revision in layout/building plan if the unit ceases to be preferentially located, then the respondent company shall be liable to refund/adjust the amount of PLC without interest. The respondent has mentioned in the facts of the complaint that the complainant has paid an amount of Rs.700/- sq. ft. as PLC charges which became futile due to changes in the layout and the floor made by the respondent.
32. First of all the buyer's agreement is a pre-RERA agreement and after going through the pleadings of the complainant and relevant clauses of apartment buyer's agreement dated 29.07.2016, the Authority has observed that the afore-mentioned charges are specifically agreed between the parties, thus the respondent can charge as per the agreed terms of the buyer's agreement dated 29.07.2016.

G.VIII To take the action against the respondent, as the respondent has misled the complainant by executing the buyer's agreement based on the super area and has never made any clarification on the actual carpet area through any communication till date.

33. The Authority after carefully considering the submissions presented by the complainant, finds that the complainant has failed to substantiate his claims with any documentary evidence and it has not been pressed during the proceedings by the counsel for the complainant. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Thus, no direction to this effect.

H. Directions of the Authority:

34. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. 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 due date of possession i.e. August, 2020 till obtaining occupation certificate (31.03.2022) plus two months i.e., 31.05.2022. 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.
 - ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of delayed possession charges in next 30 days from the date of issuance of revised SOA.
 - iii. 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.

iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee 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. 3864-3889/2020* decided on **14.12.2020**.

35. The complaint stand disposed of.

36. Files be consigned to the registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.10.2025