

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

Complaint no.	:	22 of 2022
Date of complaint	:	14.01.2022
Date of order	:	31.10.2025

Rajiv Goyal
R/o: - Flat no. 503, Sheeba Apartment,
Sector-28, Gurgaon, Haryana

Complainant**Versus**

M/s ALM Infotech City Pvt. Ltd.
Office at: 9th Floor, ILD Trade Centre, Sector-47
Sohna Road, Gurugram

Respondent**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Sh. Rajeev Khare (Advocate)
Sh. Manika (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the 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. N.	Particulars	Details
1	Project name and location	"ILD Grand", Sector 37C, Gurugram
2.	Project area	5.697 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	96 of 2010 dated 03.11.2010 118 of 2011 dated 26.12.2011
5.	RERA Registered/ not registered	Registered vide no. 386 of 2017 dated 18.12.2017 extended upto 30.06.2023
6.	Unit no.	5A, Block- Proxima, 5 th floor [Page no. 25 of the complaint]
7.	Unit measuring	1304 sq. ft. [Page no. 25 of the complaint]
8.	Date of Allotment	21.03.2012 [page no. 18 of complaint]
9.	Apartment agreement buyer	22.04.2014 [page no. 22 of complaint]
10.	Possession clause	9. Possession <i>"Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to</i>

		<p><i>the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer, the Developer proposes to complete the construction within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances".</i></p> <p>(Page no. 36 of the complaint).</p>
11.	Due date of possession	<p>22.10.2017</p> <p>[Calculated from date of agreement including grace period of 180 days as it is unqualified.]</p>
12.	Total consideration	<p>Rs. 57,92,040/-</p> <p>[as per SOA dated 13.02.2020 on page no. 56 of complaint]</p>
13.	Total amount paid by the complainant	<p>Rs.54,45,134/-</p> <p>[as per SOA dated 13.02.2020 on page no. 56 of complaint]</p>
14.	Occupation certificate /Completion certificate	<p>21.08.2024</p> <p>(page no. 119 of reply)</p>
15.	Offer of possession	<p>22.09.2024</p> <p>(page no. 122 of reply)</p>
16.	Conveyance deed	<p>27.12.2024</p> <p>(page no. 126 of reply)</p>
17.	Sale deed in favour of third party	<p>06.02.2025</p> <p>(page no. 33 of reply)</p>

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the complainant booked a flat in this project on 22.12.2011 on payment of Rs. 3,00,000/-. The allotment letter was issued on 21.03.2012 and the agreement was executed on 22.04.2014.
- II. That in terms of the agreement, delivery of property was due on 19.10.2017 but the respondent defaulted in performing his part of contract.
- III. That the complainant had paid Rs. 52,63,410/- out of basic sale consideration of Rs. 57,92,040/-, S Tax of Rs. 1,81,724/- and extra sum Rs. 12, 530/- (total of 54,57,664/-) towards all the construction linked demands raised by respondent from time to time, upto 19.10.2017.
- IV. Additionally the respondent raised H-VAT demand of Rs. 1,57,480/- which was paid on 13.06.2016. That on complainant's persistent queries, the respondent admitted that HVAT dues amounted to 19,991/- only, effective from 12.09.2016.
- V. That the respondent refused to refund the unlawfully kept excess HVAT Rs. 1,37,489/- by asserting that the excess would be adjusted against future HVAT demands only.
- VI. Post October, 2017, the complainant enquired into date of possession but to no avail. Respondent gave false promise in January 2019 of delivering the flat by end of 2019 and then chose not to revert to repeated queries about date of possession.
- VII. That the respondent raised another demand of Rs. 2,51,628/- on 22.07.2020 but the complainant rightly asked the respondent to pay the DPC as per provisions of RERA and refund the excess HVAT also along with accrued interest.

VIII. Thus respondent willfully neglected to handover possession of flat allotted to the complainants and consequently there has been a delay of 4 years, 2 months and 20 days till 07.01.2022 in handing over possession of the property to allottees.

IX. That the community buildings are necessarily a part of common areas and are vested with resident through RWA but the respondent illegally charged club membership charge of Rs. 1,00,000/- along with applicable taxes and makes preposterous claim of ownership of the Club building i.e. Community Buildings.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondents to pay DPC for every month of delay from the date of order till 2 months after receipt of OC.
- II. Refund of excess HVAT of Rs. 1,37,489/- alongwith interest from 12.09.2016 till actual date of refund.
- III. Refund of club membership charge of Rs.1,00,000/- + Service tax alongwith accrued interest from 20.10.2014 till actual date of refund as community buildings are necessarily part of common areas.

5. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint by filing reply on the following grounds: -

- I. That the respondent herein had obtained license no. 96 OF 2010 on 03.11.2010 & 118/2011 on 26/12/201 from the Director, Town and Country Planning Department, Haryana for the development of a residential project known under the name and style of "ILD GRAND" situated at Sector 37 C, Tehsil and District Gurugram, Haryana.
- II. That the project of the respondent has also been registered with the Haryana Real Estate Regulatory Authority vide registration certificate no. 386 OF 2017 DATED 18.12.2017.
- III. That the project was developed and after the completion of the project, the respondent applied for the grant of occupation certificate and the same was duly received by respondent on 21.08.2024 bearing no. ZP-370-Vol-IV/JD(RA)/2024/26807 dated 21-08-2024 by the Department of Town and Country Planning.
- IV. That since the complainants failed to fulfil their obligation and make timely payments towards the outstanding dues despite several reminders, the unit allotted to the complainants was validly cancelled in accordance with the law and provisions of the Haryana Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "**Act**"), and hence, the present complaint is liable to be dismissed. The grounds for dismissal of the complaint are detailed in this reply.
- V. The complainant has sold the unit no. 5A, 5th Floor, Tower Proxima, ad-measuring 1304 sq. ft. along with one car parking space in group housing colony "ILD Grand" to a third party and is not an allottee - there is no locus standi of the complainant to file the present complaint and seek any relief.

- VI. That the complainant has sold the unit to third party vide sale deed dated 06.02.2025, which marks the end of the contractual relationship between the parties.
- VII. That during the course of the present complaint, the complainant sold the property to Mr. Ankit Jain and Mrs. Sakshi Jain vide sale deed dated 06.02.2025 but has deliberately concealed material facts in order to misguide the Hon'ble Tribunal. The *malafide* intent of the complainant is evident herein, which is to unjustly enrich himself by concealing material facts from the Ld. Authority.
- VIII. That the complainant has acted fraudulently and cannot be granted any relief from the Ld. Authority as the balance of equity does not fall in his favour.
- IX. That the captioned complaint is a frivolous attempt by the complainant to illegally extract monies out of the respondent. That the complainant has no locus standi to approach the Ld. Authority. That the complainant is not entitled to any relief whatsoever and is in fact liable to be held for fraud, concealment of material facts, making false statements, and filing false affidavits before the Ld. Adjudicating Officer.
- X. That the Ld. Authority has no jurisdiction to entertain the present complaint with respect to the present unit as the complainant no longer fall in the category of "Allottee" as per the provisions of the Act. The Act recognized three stakeholders of the real estate sector, namely the allottee, the developer, and the real estate agent; the complainant falls in neither of the said categories and hence, cannot rightly approach the Ld. Authority. Hence, the Authority has no jurisdiction to entertain the present case and grant the reliefs sought whatsoever.

XI. That upon execution of the said sale deed, the complainant ceased to have any locus standi in respect of the unit and no longer qualifies as an "allottee" under Section 2(d) of the Act. The complainant is no longer a beneficiary of the project, nor does he retain any obligation or entitlement under the RERA framework in relation to the said property. When a similar case was filed before RERA, the same was dismissed.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of 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

8. 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

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

Section 11.....(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainants.

- I. Direct the respondents to pay DPC for every month of delay from the date of order till 2 months after receipt of OC.
- II. Refund of excess HVAT of Rs. 1,37,489/- alongwith interest from 12.09.2016 till actual date of refund.
- III. Refund of club membership charge of Rs.1,00,000/- + Service tax alongwith accrued interest from 20.10.2014 till actual date of refund as community buildings are necessarily part of common areas.

11. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges along with interest on the amount paid. 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.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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

12. In the present complaint, the complainant is seeking delay possession charges on the total amount paid by him to the respondent for the delay caused by the respondent in handing over the possession of the unit to the complainant. However, during the proceedings of the case, the Authority was apprised by the counsel of the respondent with the fact that the complainant has sold the subject unit to a third party vide sale deed dated 06.02.2025 and the sale deed is brought on record by the counsel of respondent alongwith the reply filed on 18.07.2025.
13. After considering the contentions advanced by the parties, two issues arises before the Authority for consideration :
- Whether the complainant herein falls within the definition of allottee as per section 2(d) of the Act of 2016 and;
 - Whether at the date of filing of complaint any cause of action to claim with regard to delayed possession charges survived in his favour?

14. That the Buyer's Agreement was executed between the parties on 22.04.2014. On the due date for handing over of possession in terms of the agreement, the unit was not complete and the respondent/promoter failed to offer possession of the allotted unit on the due date of handing over of possession. Admittedly, the possession of the unit was offered on 22.09.2024. The conveyance deed for the allotted unit was executed in favour of complainant by the respondent/promoter on 27.12.2024. However, after taking physical possession of the allotted unit and execution of the conveyance deed, the complainant sold the subject unit in favour of Mr. Ankit Jain vide sale deed dated 06.02.2025. The present complaint was filed on 14.01.2022 by the complainant who is the erstwhile allottee, seeking delayed possession charges under section 18 of the Act of 2016. Now, the issue for determination before the Authority is whether the complainant herein was an allottee at the time of filing of complaint as per provisions of section 2(d) of the Act of 2016 which is reproduced as under:-

"2 In this Act, unless the context otherwise requires-

*(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, **has been allotted**, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes **the person who subsequently acquires the said allotment through sale, transfer or otherwise** but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

(Emphasis supplied)

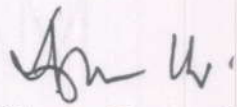
15. Accordingly, following are allottees as per this definition:

(a) **Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

(b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

16. In the present complaint, the complainant is no more an allottee under the provisions of the Act as the complainant does not fall under any of the two categories stated above as the complainant has already transferred the subject unit in favour of Mr. Ankit Jain (subsequent allottees/present owners) vide sale deed dated 06.02.2025. After transferring the unit, the complainant does not have any right, title or interest in the said unit. Thus, the complainant has no locus standi to claim delay possession charges under section 18 of the Act as she does not fall under the definition of allottee as defined under section 2(d) of the Act 2016.
17. In light of the above-mentioned findings of the authority, the complainant is not entitled to any relief and the present complaint stands dismissed on merits accordingly.
18. Complaint as well as applications, if any, stands disposed off accordingly.
19. File be consigned to the registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.10.2025