

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

Complaint no.	4933 of 2024
Date of filing	22.10.2024
Date of First Hearing	21.05.2025
Date of Decision	23.12.2025

**Alka Jindal and Parveen Kumar
Jindal****Both R/o:** A-804, Central Park Flower
Valley, Sector- 29, 30 and 32,
Gurugram**Complainants****Versus****St. Patricks Reality Private Limited**
Regd. office: 3rd Floor, Tower-D, Global
Business Park, MG Road, Gurugram, Haryana**Respondent****CORAM:**Shri Arun Kumar
Shri Phool Singh Saini**Chairman
Member****APPEARANCE:**Shri K. K. Kohli, Advocate
Shri Venket Rao, Advocate**Complainant:
Respondent****ORDER**

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

Sr. No.	Particulars	Details
1.	Name and location of the project	"Central Park Flower Valley" (Earlier known as Central Park III), Sector- 29, 30, 32 and 33 of village Dhunela and Berka, Tehsil Sohna, District Gurugram
2.	Nature of the project	Group Housing Complex
3.	Area of the project	10.925 acres
4.	RERA registered/ not registered and validity status	Registered Registered vide no. 11 of 2020 dated 18.03.2020 Valid upto 31.12.2024
5.	DTCP license no. and validity status	54 of 2014 dated 20.06.2014 valid upto 19.06.2024 28 of 2016 dated 23.12.2016 valid upto 22.12.2021 7 of 2020 dated 29.01.2020 valid upto 28.01.2025
6.	Name of licensee	Chandiram Pratap Singh s/o Shivcharan and 3 others
7.	Unit no.	804, 8 th Floor, Tower A (As per BBA at page no. 41 of complaint)
8.	Unit area admeasuring	1590 sq. ft. super area (Earlier) 1789 sq. ft. super area (Final) (An increase of 199 sq. ft. i.e. 12.5% increase) (As per offer of possession at page no. 109 of reply)
9.	Payment Plan	Possession Linked payment plan (Page no. 61 of complaint)
10.	Date of execution of buyer's agreement	18.07.2017 (Page no. 40 of complaint)
11.	Possession clause	7.1 Possession clause <i>"The Company shall endeavour to offer the possession of the said Apartment to the Allottee(s) within a period of 36 months with a grace period of another 6 months from the date of this Agreement subject to the timely</i>

		<i>payment of sale price, other charges as per Details of Payment(Annexure-1), Payment Plan (Annexure-2) and all other payments as per terms of this Agreement including payment of interest by the Allottee(s)...."</i> (Emphasis supplied) (BBA at page no. 49 of complaint)
12.	Due date of possession	18.01.2021 (Calculated from date of execution of BBA i.e., 18.07.2017 along with 6 months grace period in lieu of Covid-19)
13.	Basic sale consideration	Rs. 1,30,93,272/- (As per BBA at page no. 42 of complaint)
14.	Amount paid by the complainants	Rs. 1,47,73,182/- (As per payments receipts annexed at Page no. 72-82 of complaint)
15.	Occupation certificate	13.01.2023 (Page no. 106 of reply)
16.	Offer of possession	18.02.2023 (Page no. 83 of complaint)
17.	Possession Certificate	25.05.2023 (Page no. 92 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- That the complainants purchased a unit bearing No. A-804 in tower No. A on Floor No. Eight in "Aqua Front Tower" at Central Park Flower Valley.
- The "Aqua Front Tower" project was launched in the year 2016 with the promises to deliver in time and huge funds were collected over the period by the company. The complainants have paid a sum of Rs. 1,30,93,272/- Even after taking huge amount, the respondent, offers possession after a delay of approx. 25 months beyond the delivery period that too with many demands which are not a part of the Apartment Buyers Agreement and hence unjust and illegal.
- As per clause 7.1 of the Apartment Buyers Agreement which was entered upon 18.07.2017, the possession of the said unit was supposed

to be delivered within 36 months of signing the agreement which comes out July, 2020. An invalid offer of possession of the unit has been made on 18.02.2023 after a considerable delay of more than 33 months.

- (d) That though the possession has been given but the conveyance deed has not yet been signed and hence it cannot be said to be a valid possession.
- (e) The said offer of possession sent by the respondent to the complainants includes many demands which are not a part of the buyer's agreement and hence are not payable by the complainants and the same are mentioned hereunder:
- I. Total increase in area 199 sq. ft – Rs. 10,57,470/-
 - II. Additional EDC & IDC – Rs. 40,891.99
 - III. Power Back Up charges – Rs. 1,25,000/-
 - IV. Water connection charges of Rs. 44,725/-
 - V. Electricity Facility charges of Rs. 2,14,680/-
 - VI. Escalation charges of Rs. 9,50,660/-
 - VII. Maintenance charges of Rs. 1,11,462/-
- (f) The complainants have been offered the possession of the unit measuring 1789 sq. ft., whereas the complainants have signed an Apartment Buyer's Agreement for 1590 sq. ft. In the present case, at time of offer of possession only, the unit's area is increased, which as per the Honourable Supreme Court is illegal and wrong. Hence, the complainants are not to pay the additional BSP amount of Rs.10,57,470/-, additional EDC/IDC of Rs. 40,891/- additional taxes, both Centre and State Government levies, additional stamp duty, additional maintenance to the society, additional advance towards the maintenance and the perpetual inflated maintenance bills through the tenure if ownership of my clients.
- (g) That this illegal demand has been raised on the complainant by the respondent, without even caring for the following issues of the complainants.

- I. If there is an increase in the carpet area and has the increase in the area been approved by the relevant authorities by getting the revised lay out plans sanctioned?
- II. What has been the corresponding increase in the carpet and the built-up area of the apartment? It is very important to answer the exact change in dimensions that has happened by this increase in area.
- III. Has the civil contractor been paid as per the increased area? What has been the revision in the layout plans provided to him for carrying out the construction?
- IV. What was the additional material purchased to construct the additional area. How much is the variation from the initial estimates?
- V. When was this increase in area discovered? When were the relevant authorities notified of the same? What were the observations of the relevant authorities about the same?
- VI. How has the increase in the area impacted the overall FAR of the project? If there has been an overall Increase in the FAR, has the same been regularized by the relevant authorities?

(h) The Authority in several matters has passed orders which mandate that the allottees are not liable to make any payments that were not a part of the builder buyer agreement. Since the following charges haven't been specifically mentioned in the buyer's agreement these changes are unjust, illegal and unmaintainable-

- I. Power Back Up charges of Rs. 1,25,000/-
- II. Club Membership Charges Rs. 3,50,000/-
- III. Water Connection Charges of Rs. 44,725/-
- IV. Electricity Facility Charges of Rs. 2,14,680/-
- V. Escalation Charges of Rs. 9,50,660/-

(i) That occupation certificate is always provided by the competent authority to the promoter only after the completion of the building when the same is ready for possession and occupation. unless and until the building has the electricity which also includes the power back up system and water connections, how can the same be said to be fit for occupation. Electricity is an eye and water is the soul of a dwelling unit.

Therefore, if these two facilities are not provided to the allottee in the unit, the allottee himself cannot survive. Hence, charging under these heads to the complainants is not justifiable for these reasons as well. The Authority in a recent judgement in "Varun Gupta versus Emaar India Ltd." has reached to the conclusion that the promoter should not charge electrification charges from the allottees while issuing offer of possession letter.

- (j) The Authority is already of the view that if the club has come into existence and the same is operational or is likely to become operational soon i.e. within reasonable period of around six months, the demand raised by the respondent for the said amenity shall be discharged by the complainants as per the terms and conditions stipulated in the agreement. However, If the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club membership registration charges from the members only after completion of the club.
- (k) The promoter is selling a unit for which possession is given after obtaining occupation certificate and occupation certificate is granted under code 4.10 of Haryana Building Code, 2017 wherein the competent authority grants occupation certificate only after completion of necessary Infrastructural work as mentioned therein meaning thereby that the water supply, sewerage, electricity, road, drainage etc. have been provided by the promoter and it is all but natural that providing of such services is necessary for making a unit habitable and ready for possession to the allottee.
- (l) There may be a case of charges for some of the services separately if a specific provision along with quantification of the charges have been specifically provided in the builder buyer's agreement but there also

acceptability and admissibility of such charges will depend on examination of such charges on case-to-case basis.

- (m) That a huge amount of interest is payable by the respondent to complainants as per the details given from the date of delivery of possession till the valid Offer of Possession and the HARERA in all such matters orders that any payment to be made to the builder has to be made after adjustment of the interest for the delayed period. Hence, any demand which is payable after the valid offer of possession, if raised before, would be termed as illegal and unjustified.

C. Relief sought by the complainant

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

- I. Direct the respondent to pay the delayed possession charges from the due date of the delivery as per the BBA till the actual handover of possession with conveyance deed.
- II. Direct the respondent to execute registered sale deed in favour of the complainant pertaining to the unit no. A-804 in tower no. A on eighth floor along with all easements, privileges, rights and benefits attached thereto in the said project.
- III. Direct the respondent to return the amount which the complainant has already paid against the illegal and invalid demands at the time of offer of possession.
 - (a) Total increase in area 199 sq. ft Rs. 10,57,470/-
 - (b) Additional EDC & IDC - Rs. 40,891.99
 - (c) Power back up charges - Rs. 1,25,000/-
 - (d) Water connection charges of Rs.44,725/-
 - (e) Electricity facility charges of Rs.2,14,680/-
 - (f) Escalation charges of Rs. 9,50,660/-
 - (g) Maintenance charges of Rs. 1,11,462/-
- IV. The respondent been directed not to charge anything from the complainant which is not a part of the buyers agreement.
- V. It is most respectfully prayed that the hon'ble court of the be pleased to order the respondent to pay compensation to the complainants for the loss as they have been deprived of the benefit of the escalation of the

price of the flat with the interest @18% per annum from the actual date of payment of amounts till realisation.

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

D. Reply by the respondent.

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

- (a) That the complainants applied for booking of a unit and expressed the interest for booking in the aforesaid project and upon receiving the application of the complainants, the respondent vide provisional allotment letter dated 09.06.2017, was allotted a unit bearing no. A-804, 8th Floor in the project Lake Front Towers (now known as Aqua Front Towers) at Central Park Flower Valley.
- (b) That on 18.07.2017, a buyer's agreement was executed for the said unit having total Basic Sale Consideration of Rs.84,49,133/- excluding all other charges as mentioned under the agreement.
- (c) It is submitted that the complainants have applied for the unit after getting due diligence, verification done, and post being fully satisfied with project and the booking of the complainants was provisional subject to the terms of the agreement and the said fact is agreed by them under Clause E of the agreement.
- (d) That as per the provision of Clause 7.1 of the Agreement, the possession of the unit was proposed to be offered within a period of 36 months along with a grace period of 6 months from the date of the agreement subject to other terms and conditions agreed under the agreement including timely payment of instalments and as per the same the possession was to be handed over subject to force majeure circumstances.

- (e) It is not out of the place to mention here that the respondent is also entitled for the extension of 6 months' time period on account of the delay so caused due to worldwide spread of covid-19 spread, which the Authority and other courts had considered as a force majeure circumstance and have allowed extension of 6 months to the promoters at large on account of delay so caused as the same was beyond the control of the respondent.
- (f) The Ld. Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021, had considered the period affected from the second wave of Covid-19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 months extension to all the promoters. Therefore, as the project of the respondent herein was also affected by the Second Wave of Covid-19, and therefore, the extension for 3 months may be allowed. Furthermore, the promoter is also entitled to a 70-day extension until 2021, during which construction was banned by the NGT and EPCA. After considering all force majeure circumstances and the reasons beyond the control of the respondent, the possession of the unit in question was to be offered on or before 05.01.2022.
- (g) That in addition to the abovementioned hindrances, it is also pertinent to mention here that construction of real estate projects in Delhi NCR region was put on hold on various occasions by the various Courts, Authorities, etc. to mitigate the adverse effects of the pollution. Due to such ban on construction, the promoter was constrained to halt the development work in compliance of various order which effected the timely completion of the project. It is to note herein that the said delay was completely beyond the control of the respondent and thus, the respondent is entitled for extension for such period of delay.

- (h) That since inception, the complainants had agreed and understood under the application and the agreement that the size of the apartment was tentative and was subject to change upon completion, the cost for the same was to be adjusted/paid by the complainants. Even the complainants were provided the justification of increase in area. However, the complainants initially had agreed to such terms, but at a subsequent stage, have resorted to dispute under malafide intent to escape from such liability.
- (i) In accordance with Clause 1.10 of the Agreement, the complainants had understood and agreed that the super area of the unit was tentative, subject to variation/modification, i.e., increase or decrease, and such variation in the super area may occur at the time of final completion or at the time of obtaining the Occupation Certificate.
- (j) Further, as per the provision of Clause 6.4 of the Agreement, the respondent was well vested within its rights to charge for change in the area of the unit upto an extent of +/-12.5% and in case such increase in the super area goes more than 12.5% then in such case only the respondent was obligated to inform the complainant. And, in case of any dispute over the increase or decrease in area, price, and other charges, the complainant was duty-bound to raise dispute, if any, within a period of 30 days from the date of intimation of such increase or decrease.
- (k) That as per the provision of Clause 1.3 of the Agreement the complainants have agreed and understood that in addition to the basic sale price and preferential location charges, the complainants are liable to pay other charges such as club membership, club maintenance charges, IFMSD, EDC/IDC Charges, stamp duty charges.
- (l) Also, as per the provision of Clause 8.2 of the agreement the complainants upon own free will and consent had agreed to pay the

maintenance charges including charges for water as per maintenance bills raised by the Maintenance Agency/Company for maintenance of the common areas and facilities as mentioned in clause 8.1, from the date of offer of possession irrespective of the fact that whether the allottee(s) actually has taken over the possession of the said unit or not.

- (m) Further, Electricity Facility Charges were duly agreed by the complainants under Annexure-2 of the agreement. Wherein, the complainants have understood and agreed that in addition to the total amount electricity facility charges, water facility charges, cost of electricity and water meters are to be paid by the complainants.
- (n) It is pertinent to bring into the attention of the Authority that the complainants have opted for 2 reserved car parking against the unit in question. However, the complainants herein were aware of the car parking charges, at the time of booking and subsequent transfer but have now refused to bear the cost of additional car parking alleging it to be illegal.
- (o) That as per the provision of Clause 1.3 (g) of the agreement the complainants herein have agreed to pay Rs. 3,00,000/- each for the car parking but went back to the agreed terms on one pretext or the other. As the same was duly agreed by the complainant under the agreement, therefore, the respondent is within its rights to charge for the same.
- (p) As per the provision of Clause 1.3(f) of the agreement, the complainants were aware and undertook to pay the charges for connection and installation of services, including installation of water, electricity and other utilities required in the said colony which includes connection charges, cost of meter, meter installation charges and expense.
- (q) That the respondent herein shall be entitled to recover the actual charges paid to the concerned department from the allottee on a pro-

rata basis i.e. depending upon the area of the flat allotted to the complainant viz- à-viz the total area of the particular project.

- (r) In accordance with the provisions of Clause 1.3 and Clause 4 of the agreement the complainants both were liable to pay the club membership charges as agreed under the terms of the agreement. That as per Clause 4.2 of the agreement, the respondent herein at the time of the execution of the agreement has made clear to the Erstwhile allottees / complainants that the sale price of the apartment excludes charges for the Community Centre/Club, recreational facilities and other amenities in the Project. That further, it is pertinent to mention that the complainants on 31.03.2025 have entered into the Maintenance Agreement for the said project.
- (s) That the complainants were aware of the terms pertaining to escalation cost which the respondent had provided along with the agreement and by virtue of provision of clause 1.13 of the agreement, the complainants were liable to pay the escalation cost to a maximum of 10% as mentioned and agreed under the agreement.
- (t) That the respondent herein is charging for the cost escalation in terms of the agreement. The said clause of the agreement was duly agreed and consented to by the complainant upon which only the agreement between the parties was executed.
- (u) That as per the provision of clause 19 of the agreement the respondent herein was entitled for the extension of period for handing over the possession of the said apartment to the complainants for the delayed period and in such case the complainants have even agreed that they shall not be entitled to any claim, compensation for such delay.
- (v) That the respondent was committed to complete the development of the project and handover the possession with the proposed timelines.

It is pertinent to apprise to the Authority that the development work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Goods and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

- (w) That the respondent herein has already completed the project in question and had received Occupation Certificate on 13.01.2023, from the Directorate of Town and Country Planning Haryana (DTCP), for the respective tower wherein, the unit of the complainant was situated.
- (x) That in view of the Occupation Certificate, the respondent vide Offer of Possession Letter dated 18.02.2023, had offered possession to the complainant and informed that respondent has commenced with the process of handing over the possession of all the apartments in the project 'Aqua Front Tower'.
- (y) That vide same offer of possession letter dated 18.02.2023, the respondent even called upon the complainant to pay the balance outstanding amount of Rs. 86,80,665/- due upon offer of possession after adjusting the delayed possession interest which the complainant was entitled for.
- (z) That further, it is pertinent to mention that the complainant opted for possession linked payment plan and defaulted in making the payment on several occasions and the same is reflected in the statement of accounts as annexed by the complainants. That due to the non-payment of amount within the stipulated time, an interest for late fee payment accrued amounting to Rs. 5,23,316/-. Further, in order to waive off the

said interest, complainant wrote a letter dated 20.03.2023 to the respondent to waive off the said interest and seeking extension to pay the balance amount.

(aa) Further, after offering the possession of the subject unit, respondent sent a letter dated 05.04.2023 reminding the complainants to pay the due amount of Rs. 22,22,378/-. Thereafter, after receiving the payment, the respondent vide letter dated 10.07.2023, requested the complainant to complete the process of registration. It is apposite to state that the complainants failed to execute the registration process in their favour. In the interregnum, the complainant took possession vide confirmation letter dated 25.05.2023.

(bb) That again the respondent vide e-mail dated 26.09.2023, reminded and requested the complainants to complete the process of registration of their unit by providing details of all the concerned persons who will assist the complainant to register the unit. Therefore, it is the fault on the part of the complainant who never came forward to execute the conveyance deed.

(cc) That there exist no cause of action as much as in favour of the complainant or against the respondent and the complaint under reply is liable to be dismissed as per the facts and averments as explained hereinabove.

7. All other averments made in the complaint were denied in toto.

8. 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 based on these undisputed documents made by both the parties.

E. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

12. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:**F.I Objections regarding Force Majeure**

13. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders passed by the Hon'ble SC to stop construction, notification of the Municipal corporations Gurugram, Covid 19, etc. The plea of the respondent regarding various orders of the Supreme Court, NGT, etc., and all the pleas advanced in this regard are devoid of merit. The orders passed by SC banning construction in the NCR region were for a very short period, and such exigencies should have been accounted for at the very inception itself and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Further, there may be cases where allottee has not paid instalments regularly but the allottee cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons, and it is a well-settled principle that a person cannot take benefit of his own wrong.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

14. In the present case, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 18.07.2020. It is claiming benefit of lockdown which came into effect on 23.03.2020. As per **HARERA Notification No. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.07.2020 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to 18.01.2021.

G. Findings regarding relief(s) sought by the complainants:

G.I Direct the respondent to pay the delayed possession charges from the due date of the delivery as per the BBA till the actual handover of possession with conveyance deed.

15. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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."

16. Clause 7.1 of apartment buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 7.1

The company shall endeavour to offer the possession of the said apartment to the Allottee(s) within a period of 36 months with a grace period of another 6 months from the date of execution of agreement subject to timely payment of the sale price, other charges as per Detail of payment (Annexure-1), payment plan (annexure-2) and all other payments as per the terms of this agreement including payment of interest by the allottees....."

17. **Admissibility of delay possession charges at prescribed rate of interest:-** The complainants are seeking delay possession charges however, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, ibid. 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.

18. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
19. 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., 23.12.2025 is @ 8.80 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
20. 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;"*
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80 % by the respondent/promoter

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

22. 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 buyer's agreement executed between the parties on 18.07.2017, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement (18.07.2017) which comes out to be 18.07.2020. The grace period of 6 months is in lieu of covid-19 is allowed. Therefore, the due date of handing over possession comes out to be 18.01.2021. Occupation certificate was granted by the concerned authority on 13.01.2023 and thereafter, the possession of the subject unit was offered to the complainants on 18.02.2023. Possession of the said unit was also handed over to the complainants on 25.05.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 25.07.2017 to hand over the possession within the stipulated period.
23. Section 19(10) of the Act obligates the allottees 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 13.01.2023. The respondent offered the possession of the unit in question to the complainants only on 18.02.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given

to the complainants keeping in mind that even after intimation of possession practically they have 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.

24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.80% p.a. w.e.f. due date of possession till the date of offer of possession (18.02.2023) plus two months i.e., till 18.04.2023 or actual handing over of possession (25.05.2023), whichever is earlier. The date of offer of possession plus two months being earlier than the date of actual handing over of possession, the respondent is directed pay interest at the prescribed rate i.e., 10.80% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 18.01.2021 till the date of offer of possession plus two months i.e. up to 18.04.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

G.II Direct the respondent to execute registered sale deed in favour of the complainant pertaining to the unit no. A-804 in tower no. A on eighth floor along with all easements, privileges, rights and benefits attached thereto in the said project.

25. The complainants are seeking relief of execution of conveyance deed. A reference to the provisions of Section 17(1) of the Act is also must and it provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the

allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

26. The respondent/promoter is under an obligation as per Section 17 of Act to get the conveyance deed executed in favor of the complainants. Since the occupation certificate for the project had already been received on 13.01.2023, the respondent is directed to execute the conveyance deed in favor of the complainant within a period of 60 days upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government in terms of Section 17 of the Act, failing which the complainant may approach the Adjudicating Officer for execution of order.

G.III Direct the respondent to return the amount which the complainant has already paid against the illegal and invalid demands at the time of offer of possession.

(a) Total increase in area 199 sq. ft Rs. 10,57,470/-

(b) Additional EDC & IDC - Rs. 40,891.99

(c) Power back up charges - Rs. 1,25,000/-

(d) Water connection charges of Rs.44,725/-

(e) Electricity facility charges of Rs.2,14,680/-

(f) Escalation charges of Rs. 9,50,660/-

(g) Maintenance charges of Rs. 1,11,462/-

G.IV The respondent been directed not to charge anything from the complainant which is not a part of the buyers agreement.

27. In the present complaint, the allottees have disputed various charges being sought from them at the time of offer of possession by the respondent like increase in BSP owing to increase in super area, additional EDC/IDC, power backup charges, water connection and electricity facility charges, escalation charges and maintenance charges. The authority shall now discuss all the issues pertaining to various charges levied by the promoter at the time of

handing over of the possession and in terms of agreement signed between the parties.

A. Increase in BSP owing to increase in super area of the allotted unit.

28. The complainants state that the area of the said unit was increased from 1590 sq. ft. to 1789 sq. ft. vide offer of possession dated 18.02.2023 without giving any prior intimation to, or by taking any written consent from the allottees. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. Relevant clause of the agreement is reproduced hereunder:

Clause 6.4

The alterations in the building plans may involve change in the number of floors in the building, position, location, size, number, dimension, direction / facing, numbering of the Apartment or super area of the said Apartment. If the change in super area of the said Apartment results up to 12.5% because of such alterations or for any other reason, the Allottee(s) shall pay to the Company the BSP and other applicable charges at the same rate and in the same manner as mentioned in the Details of Payment and Payment Plan. However, if the change in super area of the said Apartment after construction results more than 12.5% because of such alterations or for any other reason the Company shall intimate in writing to the Allottee(s) after completion of construction the extent of such change/modification in the super area of the said Apartment and the resultant change/modification in the total Sale Price and other charges. The Allottee(s) agrees to inform the Company his/ her consent or objections to such change/modification in the super area of the said Apartment and the change/modification in the total Sale Price and other charges within 30 days from the date of intimation by the Company failing which the Allottee(s) shall be deemed to have given his / her consent to such changes/modifications. The Allottee(s) further agrees that any increase or decrease in the super area of the said Apartment shall be payable by the Allottee(s) or refundable by the Company at the same rate per square feet as mentioned in this Agreement. If the Allottee(s) objects in writing to such change in the super area of the said Apartment within a period of 30 days from the date of intimation by the Company, the allotment of the said

Apartment to the Allottee(s) shall stand terminated/ cancelled and later deduction of the interest for delayed payment, brokerage, cost of any incentive or facility given and other charges of non-refundable nature and upon such refund the Company thereafter shall be free to deal with the said Apartment in any manner whatsoever at its sole discretion including re-allotment of the said Apartment to any other person.

29. Clause 6.4 of the buyer's agreement allows for changes in the super area of the unit, stating that "if the change in super area of the said Apartment results up to 12.5% because of such alterations or for any other reason, the Allottee(s) shall pay to the company BSP and other applicable charges." In the present case, the increase in super area from 1590 sq. ft. to 1789 sq. ft. amounts to an 12.5% increase, which falls well within the threshold specified in the agreement.
30. Furthermore, the agreement provides that the respondent is required "intimate in writing to the allottee(s) after completion of construction the extent of such change/modification in the super area." The respondent has fulfilled this requirement by informing the complainant of the increase in super area at the time of the offer of possession on 18.02.2023. The agreement does not mandate any prior intimation before the completion of construction.
31. It is also important to note that the agreement was executed prior to the enactment of the Rules, 2017. So, the provisions of the agreement, which were mutually agreed upon by the parties, should be the governing framework for determining the rights and obligations of the parties.
32. Hence, in light of the clear contractual provisions allowing for changes in super area and the respondent's compliance with the intimation requirements, the respondent's actions of charging the additional BSP and other charges due to the increase in the super area of the subject unit can be

levied subject to furnishing of complete details relating to increase in super area along with its justification to the complainants.

B. Additional EDC/IDC.

33. The complainants took the plea that the respondent-builder has arbitrarily imposed additional EDC/IDC at the time of offer of possession. The respondent-builder in its defense submits that additional EDC/IDC charges were duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charges was comprehensively set out in the buyer's agreement. The said clause of the agreement is reproduced hereunder: -

"1.5 The Allottee(s) shall also pay the EDC, IDC, IAC and other charges levied by on the mentioned in the Details of Payment annexed as Annexure 1 and as per Plan annexed as Annexure 2. Any future levy in the existing levy in respect of the charges herein, by the Government to be payable by the Company with prospective or retrospective effect shall also be payable by Allottee(s) to the Company in the same proportion."

34. In light of the aforementioned facts, the Authority is of the view that the said demand for additional EDC/IDC is valid since these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Hence, the respondent is justified in charging the said amount. In case instead of paying individually for the unit, if the builder has paid composite payment in respect of the additional EDC/IDC, then the promoter will be entitled to recover the actual charges paid to the concerned department from the allottees on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants viz- à-viz the total area of the particular project. The complainants will also be entitled to get proof of all such payment to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid head.

C. Power Backup Charges.

35. The complainants took the plea that the respondent-builder has arbitrarily imposed power backup charges at the time of offer of possession. The respondent-builder in its defence submits that power backup charges were duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer agreement. 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: -

"10.3 The Company shall provide the facility of power back up in the Colony and the load/extent of power back-up upto 5KV @ Rs. 25,000/- per KV. The allottee agrees to take connection of the power back up facility in of this clause. The allottee also agrees to pay the share as determined by the Company or Agency, as the case may be, for the including for providing the facility of power back up, failing which the same shall be treated as unpaid portion of the total sale price payable by the allottee for the said Apartment. In case the Allottee needs extra power back up, the Company at its discretion may provide such extra power back up subject to availability and on payment of such charges as may be decided by the company."

36. As per clause 10.3 and Annexure-1 of the builder buyer agreement dated 18.07.2017, the complainants had agreed to pay the cost of power backup charges over and above the basic sale price. Accordingly, the respondent is justified in charging the same from the complainants.

D. Water Connection Charges and Electricity Facility Charges.

37. The complainants took a plea that the respondent-builder has arbitrarily imposed water and electricity charges at the time of offer of possession. The respondent-builder in its defence submits that water and electricity connection charges were duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer agreement. 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: -

"1.3 The Allottee(s) has understood and agreed that in addition to the Basic Sale Price (BSP) and applicable Preferential Location Charges (PLC), following other charges and deposits shall be payable by the Allottee(s):

*.....
(f) for connection and of water, electricity and other utilities in the said Colony and/or Apartment which charges, cost of Meter, Meter charges & for connection from main line to the Apartment."*

38. There is no doubt that all these charges are payable to various departments for obtaining service connections from the concerned departments including security deposit for sanction and release of such connections in the name of the allottee and are payable by the allottee. Moreover, the authority has already dealt with the above charges in the complaint bearing no. **CR/4747/2021 titled as "Vineet Choubey V/S Pareena Infrastructure Private Limited"** wherein the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee(s) on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainants vis-e-vis the area of all the flats in this particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. The model of the digital meters installed in the complex be shared with allottee(s) so that they could verify the rates in the market. Accordingly, the respondent is entitled to charge on above pretext.

E. Escalation Charges

39. The complainants took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent submits that cost of escalation was duly agreed by the complainants at the time of agreement and the same was incorporated in the buyer agreement.

The undertaking to pay the above-mentioned charge was comprehensively set out in the buyer agreement. The said clause of the agreement is extracted below:-

"Clause 1.13

..... The Company shall make efforts to limit the escalation to a maximum of 10% (ten percent). In the event of escalation exceeding the said maximum limit, the Allottee may at its sole discretion, either accept the escalation beyond the maximum of 10% or withdraw from the Agreement. Upon such withdrawal, the total amount paid to the Company minus Earnest Money Deposit, Instalments paid, interest if any paid/ payable, brokerage and cost of any scheme or benefit given and non-refundable charges, shall be refunded to the Allottee without any interest."

40. In the present complaint the complainants wish to continue with project.

The Authority cannot accede with the relief sought by the complainants to revoke the escalation charges charged by the respondent as the same was agreed by the parties at the time of execution of buyer's agreement. It is also pertinent to note that any cost escalation occurring after the due date of possession should be borne by the respondent. This is because such escalation is a direct result of the respondent's failure to transfer possession of the unit within the agreed timeframe, leading to increase in cost. Consequently, attributing the delay and subsequent escalation costs to the complainants would be unjust. Therefore, it is concluded that the escalation charges imposed after the due date of possession are illegal and not to be charged.

F. Maintenance charges

41. The complainants raised an objection towards the amount raised towards maintenance charges. This issue has already been dealt with by the Authority in complaint bearing no. **4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021**, wherein it was held that the respondent is right in demanding maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of

possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

42. Also, as per the clause 8.3 of the buyer's agreement the complainants agreed to pay the maintenance charges for twelve months in advance upon offer of possession. The relevant clause of the buyer's agreement is extracted below:

"8.3

In order to keep the Colony well maintained, the Allottee(s) shall pay the maintenance charges (excluding electricity and water charges) for 12 months in advance upon offer of possession of the said Apartment by the Company. The advance maintenance charges shall be payable on estimated basis and in case of shortfall because of increased actual maintenance cost, the Allottee(s) shall be liable to pay such shortfall on pro rata basis.

Hence, the respondent is well within his rights to charge for the maintenance as per the agreed terms of the buyer's agreement executed between the parties.

43. The Authority is of the view that the respondent shall not charge anything from the complainants which is not part of the buyer's agreement executed between the parties. Thus, certain illegal demands raised in the offer of possession shall not be payable by the complainants. And if already paid by the complainants shall be refunded back to them.

G.V It is most respectfully prayed that the hon'ble court of the be pleased to order the respondent to pay compensation to the complainants for the loss as they have been deprived of the benefit of the escalation of the price of the flat with the interest @18% per annum from the actual date of payment of amounts till realisation.

44. The complainants are seeking relief of compensation w.r.t litigation expenses and mental agony. The Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "**M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.**" (supra), has held that an allottee

is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72.

H. Directions of the Authority:

45. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of a delay from the due date of possession i.e., from 18.01.2021 till the date of offer of possession plus two months i.e. up to 18.04.2023 as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- III. The respondent is directed to 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 complainants are directed to pay outstanding dues if any remains,

after adjustment of delay possession charges within a period of next 30 days.

- IV. The additional BSP and other charges due to the increase in the super area of the subject unit can be levied by the respondent subject to furnishing of complete details relating to increase in super area along with its justification to the complainants.
- V. The respondent would be entitled to recover the actual charges paid to the concerned departments' from the complainants/allottee(s) on pro-rata basis on account of electricity and water connection charges depending upon the area of the unit allotted to complainants vis-à-vis the area of all the flats in this particular project. The complainants would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.
- VI. The respondent shall charge the escalation charges from the date of entering into buyer's agreement(18.07.2017) till the due date of possession(18.01.2021). However, the complainants would be entitled to ^{the} proof of such cost escalation from the respondent, before making a ^{the} payment under this head. Further, any cost escalation occurring after the due date of possession must be borne by the respondent.
- VII. The respondent is allowed to collect a reasonable amount from the complainants on account of the maintenance charges with respect to IFMSD as has already been laid down in ***complaint bearing no. 4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited"*** decided on 12.08.2021.
- VIII. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also



not entitled to charge holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

- IX. The respondent is directed to execute the conveyance deed in favor of the complainants within a period of 60 days upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government in terms of Section 17 of the Act, failing which the complainants may approach the Adjudicating Officer for execution of order.

46. Complaint stands disposed of.

47. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:23.12.2025