

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

Complaint no. : 1507 of 2024
Date of complaint : 16.04.2024
Date of Decision : 31.10.2025

Parvesh Kumar Kheterpal
R/o: F-1131, Second Floor, C.R. Park, Near Market
No. 2, Delhi-110019

Complainant

Versus

Athena Infrastructure Pvt. Ltd.
Office at: Blue One Square, Plot no. 246, 1st Floor,
Udyog Vihar, Phase-IV, Gurugram-122016,
Haryana.

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Shri Vijender Parmar (Advocate)
Shri Arun Yadav (Advocate)

**Complainant
Respondent**

ORDER

1. The present 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	IndiaBulls Enigma, Sector 110, Gurugram, Haryana
2.	Total area of the project	15.6 acres
3.	Nature of the project	Residential Complex
4.	DTCP license no.	213 of 2007 dated 05.09.2007 valid upto 04.09.2024 Licensee : Athena Infrastructure Private Limited
		10 of 2011 dated 29.01.2011 valid upto 28.01.2023 Licensee : Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid upto 19.06.2023 Licensee: Varali Properties
5.	HRERA registered/ not registered	Registered vide no. 351 of 2017 dated 20.11.2017 Valid till 31.08.2018 354 of 2017 dated 17.11.2017 valid till 30.09.2018 353 of 2017 dated 20.11.2017 valid till 31.03.2018 346 of 2017 dated 08.11.2017 valid till 31.08.2018
6.	Allotment Letter	21.01.2011

		(page no. 20 of complaint)
7.	Builder buyer agreement	Not executed
8.	Unit no.	052, 5 th floor, building no. B [page 20 of complaint]
9.	Unit measuring (super area)	3400 sq. ft. (Page no. 22 of complaint)
10.	Possession clause	Not mentioned
11.	Due date of possession	21.01.2014 <i>(Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018] from the date of allotment letter)</i>
12.	Total sale consideration	Rs. 1,63,45,000/- (as per applicant ledger at page 72 of reply)
13.	Total amount paid by the complainant	Rs. 83,72,463/- (as per applicants ledger dated 30.12.2014 on page no. 60 of complaint)
14.	Occupation certificate granted on	12.10.2021 as per DTCP website
15.	Offer of Possession	21.02.2023 [page no. 69 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 1. That relying upon the assurances of respondent, complainant booked a residential flat bearing B-052 on 5th floor in tower/block no. B for basic sale consideration of Rs.1,65,80,000/- and paid a sum of Rs.5,00,000/- dated 10.03.2011 as booking amount.

- II. That a residential flat bearing no.052 in Tower-B, type 4 BHK + SQ on 5th floor was allotted by the respondent in the name of complainant and a letter of allotment dated 21.01.2011 with reference to the booking application dated 23.03.2011 was executed in favor of the complainant.
- III. That thereafter, the respondent started raising the demand of money / installments from the complainant, which was duly paid by the complainant as per agreed timelines. The complainant opted for the subvention scheme through Indiabulls Housing Finance Limited i.e., associate company of the respondent on 30.05.2011 and had mortgaged his unit in the said project of the respondent by way of security for the said loan. That the complainant vide said loan has paid a total of Rs. 56,94,412/- in the month of May 2011 only. The complainant had duly repaid the said loan amount in full and no further dues are payable against this loan account, whereby, a no due certificate dated 10.07.2020 was issued by Indiabulls Housing Finance Limited in favor of the complainant.
- IV. That the respondent thereafter kept on delaying the execution of the flat buyer's agreement on one pretext or other. The complainant had to run pillar to post to get the flat buyer's agreement executed from the respondent and the respondent did not sign it despite various requests of the complainant without giving any satisfactory reason for such inordinate delay. The respondent has not executed the flat buyer's agreement till date even after the complainant has paid such a hefty amount and the respondent is still raising unwarranted various demands for payments.
- V. That the complainant has received the copy of the flat buyer's agreement from the respondent for the said unit for execution and has

signed the same immediately and had delivered the signed copy of the flat buyer's agreement at the office of the respondent. However, the respondent did not handover the executed copy of the said flat buyer's agreement to the complainant till today despite repeated follow ups and requests made by the complainant to the respondent, and the respondent to cover its defaults has sent false emails to the complainant asking the complainant to sign the flat buyer's agreement despite knowing the complainant had already signed and delivered the copy to the respondent and since then the complainant has been waiting for the executed copy.

- VI. That the flat buyer's agreement of the similar units situated in block B of the said project which were allotted in the year 2011 were executed in the year 2012 and the date of delivery for the said tower was 3 years, therefore, the date of delivery of possession comes out to be in the year of 2015, hence, the respondent has caused the delay and delivery of the said unit of around 9 years.
- VII. That the complainant has been writing continuous emails to the respondent to adjust the amount accrued in favor of the complainant towards the delay possession charges calculated as per the prescribed rate of interest provided under the Real Estate Regulation and Development Act, 2016 and raised the demand of balance payment after deducting the said amount of delay possession charges, however, despite acknowledging the receipt of the said emails continuously sent by the complainant over a period of two to three years, the respondent illegally raising the demand of total due amount without deducting the delay possession charges accrued in favor of the complainant as per law which clearly is illegal and against the prescribed procedure of law.

- VIII. That the complainant as on today has paid Rs.83,72,463/- towards the sale consideration to the respondent as demanded by it from the complainant(s) time to time.
- IX. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his home on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made the life of the complainant miserable socially as well financially as all his personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no-fault on his part. The complainant being common person just made the mistake of relying on respondent's false and fake promises, which lured his to buy a flat in the aforesaid residential project of the respondent.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).
- i. Direct the respondent to handover the physical possession of the said unit to the complainant.
 - ii. Direct the respondent to pay interest at the prescribed rate on account of delay in offering possession on Rs. 83,72,463/- paid towards the sale consideration of the said flat by the complainant from the date of payment till the date of delivery of possession.

iii. Direct the respondent not to charge any interest in any manner on the balance amount of sale consideration payable by the complainant for the said unit.

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 vide reply dated 09.08.2024 contested the complaint on the following grounds: -

- I. That the complainant has filed the present complaint alleging non-violation on part of the respondent to offer possession of his unit, however it is an admitted fact that there is no agreement to sell executed by the complainant for his unit, as such no time period was ever agreed upon between the complainant and the respondent to offer the possession of the unit. That in absence of a contractual understanding/obligation the question of violation by the respondent does not arise.
- II. That the complainant with sole purpose of investment and monetary gains in the real estate market approached the respondent and after doing own market research applied for booking of residential unit in the project of the respondent.
- III. That basis of the request of the complainant, the respondent while accepting the application form dated 23.03.2011 agreed to provisionally reserve a residential unit in favor of the complainant and subsequently provisionally allotted the unit to the complainant.

- IV. That the complainant was aware of the fact that upon failure on his part to execute the apartment buyers agreement then the respondent shall, at the sole discretion can cancel his provisional reservation in the unit and forfeit all the money paid by him as per clause 11 and 12 of the application form.
- V. That the complainant was well aware of the fact that pursuant to signing of the application form, an apartment buyer's agreement is required to be executed with respect to the unit provisionally allotted to him. The complainant was further aware of the fact that only after the execution of apartment buyer's agreement, the delivery time period will come in force.
- VI. That in absence of any apartment buyer's agreement, the respondent post enforcement of the Real Estate (Regulation and Development) Act, 2016 called upon the complainant for execution of the agreement to sell however the complainant despite repeated reminders never came forward to execute the same. The complainant cannot be allowed to take benefit of his own wrong.
- VII. That the respondent has time and again issued letters and reminders to the complainant for signing of the builder buyer agreement, however the complainant failed to sign the same till date.
- VIII. That the respondent vide its various letters & reminders dated 10.02.2014, 21.02.2014, 20.10.2014, 21.10.2014, 13.11.2014, 30.12.2014, 04.02.2015, 08.04.2015, 09.05.2016, 06.05.2017, 17.05.2017, 23.05.2017, 01.06.2017, 27.06.2017, 01.07.2017, 10.07.2017, 24.07.2017, 01.08.2017, 25.09.2018, 06.12.2018 called upon the complainant to sign the builder buyers agreement for his unit which was pending on his part. However, the complainant kept

delaying execution of the agreement for the reasons best known to him.

- IX. That the emails relied upon by the complainant himself in his complaint reveals the fact that the respondent has sent multiple emails/ reminders informing the complainant regarding non-execution of the builder buyer's agreement.
- X. That the complainant has relied upon his email dated 01.08.2017 claiming that he has delivered the signed copy to respondent office. However, the respondent on the same date informed the complainant that the agreement remains unsigned.
- XI. That the complainant has alleged that there is delay in offering possession of his unit and is claiming interest for the same, however the same is not maintainable as in absence of a builder buyer agreement, no period for offering possession was ever agreed upon between the respondent and the complainant.
- XII. That the respondent vide letter dated 21.02.2023 offered possession of the unit to the complainant whereby calling him to take the possession of his unit and further to remit the outstanding dues of Rs.1,05,87,754/- standing against the unit as on the date of offer.
- XIII. That as on date i.e. 08.08.2024 an amount of Rs. 1,29,29,442/- stands outstanding and payable by the complainant against his unit.
- XIV. That the complainant is also in violation of the provisions of the Act especially 19(10) of the Act, which obligated the complainant to take the physical possession of the unit post receiving of occupational certificate.
- XV. That due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the

bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, Non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above-mentioned reasons, the project of the respondent was severely affected which were beyond the control of the respondent.

- XVI. Furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of top soil for the manufacture of bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 (fifty) Kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the Project also affected the timely schedule of construction of the Project.
- XVII. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx.. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of

scarcity of the sand and other materials which derived from the stone crushing activities, which directly affected the construction schedules and activities of the project.

- XVIII. Apart from the above, the following circumstances also contributed to the delay in timely completion of the project:
- XIX. That Commonwealth Games were organized in Delhi in October 2010. Due to this mega event, construction of several big projects including the construction of Commonwealth Games village took place in 2009 and onwards in Delhi and NCR region. This led to an extreme shortage of labour in the NCR region as most of the labour force got employed in said projects required for the Commonwealth Games.
- XX. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a sudden shortage of labour/workforce in the real estate market as the available labour preferred to return to their respective states due to guaranteed employment by the Central /State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region.
- XXI. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/company could not implement the entire project, for such period wherein the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment in cash to the labour. During Demonetization, the cash

withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of magnitude of the project in question is Rs. 3-4 lakhs approx. per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed on account of the issues faced by contractor due to the said notification of Central Government.

- XXII. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The contractor of respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to this, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.
- XXIII. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period

would also required to be added for calculating the delivery date of possession if any.

- XXIV. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- XXV. Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
- XXVI. Nationwide lockdown due to Outbreak of COVID-19 : In view of the outbreak of COVID-19, the Government of India took various precautionary and preventive steps and issued various advisories, time to time, to curtail the spread of COVID 19 and declared a complete lockdown in India, commencing from 24th March, 2020 midnight thereby imposing several restrictions mainly non-supply of non-essential services during the lockdown period, due to which all the Construction work got badly effected across the country in compliance to the lockdown notification. Additionally, the spread of COVID 19 was even declared a 'Pandemic' by World Health Organization on March 11, 2020, and COVID-19 got classified as a "Force Majeure" event, considering it a case of natural calamity i.e. circumstances to be beyond the human control, and being a force majeure period.

XXVII. Further, the Haryana Real Estate Regulatory Authority Gurugram also vide its circular / notification bearing no. No.9/3-2020 HARERA / GGM (Admn), dated 25.05.2020 extended the completion date / revised completion date or extended completion date automatically by 6 months, due to outbreak of Covid-19 (corona virus).

6. Copies of all the relevant documents have been filed and placed on 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 complainant.

E. Jurisdiction of the authority

7. The respondent in its reply has raised an objection that the Authority has no jurisdiction to adjudicate the matter. The authority has complete territorial and 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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding the complainant being investor.

11. The respondent/promoter has taken a stand that the complainant is the investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The authority observes that the Act is enacted to protect the interest of consumer of the real estate sector. It is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(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;"

12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act stands rejected.

F.II Objections regarding force majeure.

13. The respondent has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as shortage of labour, demonetization and implementation of social schemes like NREGA and JNNURM etc, demonetization, delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, stay on construction due to orders passed by NGT, Covid 19 pandemic etc. The authority observes that the due date of possession was 21.01.2014. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter cannot be granted any leniency on based of aforesaid reasons. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to

the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

- i. Direct the respondent to handover the physical possession of the said unit to the complainant.
 - ii. Direct the respondent to pay interest at the prescribed rate on account of delay in offering possession on Rs. 83,72,463/- paid towards the sale consideration of the said flat by the complainant from the date of payment till the date of delivery of possession.
14. 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."*

15. **Due date of possession:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018* observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and

circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.

16. In view of the above-mentioned reasoning, the date of allotment letter i.e. 21.01.2011 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 21.01.2014.
17. **Admissibility of delay possession charges at prescribed rate of interest:** 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.
18. 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.
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., 31.10.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

21. 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 delay possession charges.
22. On consideration of the documents available on record and submissions made by both the parties, 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. The authority observes that the due date of handing over of possession was 21.01.2014. The occupation certificate of the project was received on 12.10.2021 and subsequently unit was offered for possession on 21.02.2023. 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 handover the physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations within the stipulated period.
23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was

granted by the competent authority on 12.10.2021. The respondent offered the possession of the unit in question to the complainant only on 21.02.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit.

24. Accordingly, 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.01.2014 till offer of possession (21.02.2023) after obtaining occupation certificate plus two months i.e., 21.04.2023 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.
25. The respondent-promoter has failed to enter into a written agreement for sale against the unit in question. Hence, it is violation of the provisions of the Act, and shows its unlawful conduct. As per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondent-

promoter is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 60 days from the date of this order.

26. The complainant in the present complaint is seeking relief for the possession of the unit. The occupation for the said unit was received on 12.10.2021 thereafter possession was offered on 21.02.2023. The complainant is directed to pay outstanding dues, if any remains, after adjustment of delay possession charges and thereafter the respondent shall handover the possession of the allotted unit within next 30 days.

H. Directions of the authority

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The 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., 21.01.2014 till offer of possession (21.02.2023) after obtaining occupation certificate plus two months i.e., 21.04.2023 at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The complainant is directed to pay outstanding dues, if any remains, after adjustment of delay possession charges and thereafter the respondent shall handover the possession of the allotted unit within next 30 days.

- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.
28. Complaint stands disposed of.
29. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 31.10.2025