

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

Complaint no. : 2408 of 2024
Date of complaint : 28.05.2024
Date of order : 27.11.2025

Amit Walia

Resident at: 293, Chakki Wali Gali, Bazaria,
Ghaziabad, Uttar Pradesh-201001.

Complainant

Versus

M/s Pivotal Infrastructure Pvt. Ltd.

Regd. Office at: 309, 3rd Floor, JMD Pacific
Square, Sector-15, Part-II, Gurugram,
Haryana - 122001

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)
Shri Ankit Vohra (AR)

**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:

S.No.	Particulars	Details
1.	Name and location of the project	"Ridhi Sidhi" at sector 99, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 Valid up to 08.08.2019
5.	Renewal of DTCP license	Vide Memo no. LC-3074-PA(VA)-2023/6666 dated 06.03.2023 Valid up to 30.06.2023
6.	RERA Registered/ not registered	Registered 236 of 2017 dated 19.09.2017 Valid up to 08.08.2019
7.	Registration extension vide no.	Harera/GGM/REP/RC/236/2017/EXT/177/2019 dated 30.12.2019 Valid up to 31.08.2020
8.	Unit no.	T3-1006, 10th floor, Tower-T3 (As per page no. 68 of the complaint)
9.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 68 of the complaint)
10.	Date of allotment	06.09.2015 (As per page no. 31-43 of the complaint)
11.	Date of builder buyer agreement	08.02.2016 (As per page no.67 of the complaint)
12.	Date of building plan approval	17.10.2014 (As per page no.68 of reply)
13.	Environmental clearance dated	22.01.2016 (As per page no. 55 of reply)
14.	Possession clause	8.1 EXPECTED TIME FOR HANDING OVER POSSESSION <i>"Except where any delay is caused on account of reasons expressly provided for under this</i>

		<p><i>Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavour to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder."</i></p> <p><i>(Emphasis Supplied)</i></p> <p>(As per page no. 77 of the complaint)</p>
15.	Due date of possession	<p>22.01.2020</p> <p>[Due date of possession calculated from the date of environmental clearance dated 22.01.2016, being later]</p>
16.	Total sale consideration	<p>Rs.19,98,000/-</p> <p>(As per BBA at page no. 70 of the complaint)</p>
17.	Amount paid by the complainant	<p>Rs.22,47,579/-</p> <p>(As per payment receipts at page no. 53-63 of the complaint)</p>
18.	GST Input Tax Credit	<p>Rs.12,517/- dated 26.03.2019</p> <p>Rs.12,550/- dated 19.07.2021</p> <p>(As per page no.77-78 of the reply)</p>
19.	Application for OC	<p>22.12.2022</p> <p>(As per page no. 47 of the reply)</p>
20.	Occupation certificate	Not obtained
21.	Offer for fit out possession	<p>24.06.2023</p> <p>(As per page no.74 of reply)</p>
22.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:



- I. The respondent, advertised about its affordable housing project called "Riddhi Siddhi" in a land parcel admeasuring a total area of approximately on the 6.19375 acres of land, under the license no. 86 of 2014 dated 09.08.2014, issued by DTCP, Haryana, Chandigarh, situated at Sector 99, Village Kherika Majra Dhankot, Gurugram and thereby invited applications from prospective buyers for the purchase of unit in the said project. That the respondent confirmed that the projects had got building plan approval from the authority.
- II. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs.1,00,000/- dated 27.10.2014 towards the booking of the said unit bearing no. 1006, Block-T3, 10 Floor in Sector 99, Gurugram, having carpet area measuring 487 sq. ft. to the respondent dated 27.10.2014 and the same was acknowledged by the respondent.
- III. That the respondent confirms the booking of the said unit to the complainant vide allotment letter dated 06.09.2015, asking to get submitted the relevant documents provided in the letter and the same was duly submitted by the complainant on time. Further, providing the details of the project, confirming the booking of the unit dated 27.10.2014, allotting a unit no. 1006, Block-T3, 10 Floor, (hereinafter referred to as 'unit') measuring 487 Sq. Ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.19,98,000/- which includes basic price, Car parking charges and Development Charges and other Specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.

- IV. That an apartment buyer's agreement was executed between the complainant and respondent on 08.02.2016.
- V. As per clause 8.1 of the buyer's agreement the respondent had to deliver the possession within a period of 4 years from the date of grant of sanction of building plan or the date of receipt of all environment clearance. Hence the due date of possession is calculated from the date of building plan approval, as environment clearance i.e. 22.01.2016 and the building plans was approved on 17.10.2014. Therefore, the due date of possession comes out to be 22.01.2020.
- VI. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.22,47,579/- towards the said unit against total sale consideration of Rs.19,98,000/-.
- VII. That though the payment to be made by the Complainant was to be made based on the payment plan but unfortunately the demands being raised were not corresponding to the factual situation on ground.
- VIII. The complainant contacted the respondent on several occasions and were regularly in touch with the Respondent. The Respondent was never able to give any satisfactory response to the complainant regarding the status of the possession and was never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why possession is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.



- IX. It has been recently held by the Honourable Supreme Court as under in connection with providing the amenities as assured by the promoter / respondent at the time of selling the property:
- X. That complainant sent various communications to the respondents raising various issues in relation to the said unit and asking the reason for delay in handing over the possession of the unit and time line within which possession will be handed over to the complainant and challenging the various illegal and one-sided demands letters sent to the complainant but respondents till date has failed to provide any satisfactory response to the complainant.
- XI. That respondent sent letter of offer of possession for fit-outs dated 24.06.2023 to the complainant, mentioning that the construction of the said unit has been completed and the occupation certificate for said project has been applied. The unit is ready for the possession for the purpose of commencing the fit-outs and interior work and the same can be legitimately offered by the developer to you.
- XII. It is pertinent to note here that along with the above said letter of offer of possession respondent raised several illegal demands on account of electricity connection and pre-paid meter charges, external electrification charges and HUDA water connection charges, Labour Cess, which was never the part of the payment plan provided along with allotment letter. Therefore, the total demand raised by the respondent in aforesaid mentioned letter is of Rs.1,15,739/-.
- XIII. That the complainant after receiving the aforesaid letter of offer of possession asked the respondent to provide the copy of the OC but respondent fail to provide the same.

XIV. It is pertinent to note here that the respondent in respect of the said unit has not received the OC till dated. Hence, respondent without getting the OC sent offer of possession letter which is bad in the eye of law and clearly shows the malafide intention on the part of the respondent to cheat and extract the money from the innocent allottees. Furthermore, as per the provisions of RERA, respondent cannot offer sent the offer of possession letter to complainant without receiving the OC from the concerned department.

XV. Therefore, the aforesaid letter of possession dated 24.06.2023 is illegal and not valid as per the provisions of the RERA.

XVI. That it has been held by the Honourable NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession. In fact it is a letter for demand of money rather than being an offer of possession.

XVII. That the complainant(s) being an aggrieved person filing the present complaint under section 31 with the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph.

XVIII. The complainant after losing all the hope from the respondent, having their dreams shattered & having basic necessary facilities in the vicinity of the Riddhi Siddhi project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
- ii. Direct the respondent to refund the Rs.26,536/- collected on account of service tax and to provide benefit of Rs.25,067/- on account of GST benefit.
- iii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.
- iv. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed.
- v. Restrain the respondent from raising fresh demand for payment under any head, as the construction is abundant at the project site.
- vi. Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- vii. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
- viii. Direct the respondent to quash the offer of possession for fit out dated 28.06.2023 and issue fresh offer of possession after obtaining OC and without any illegal charges which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the complainant.
- ix. Direct the respondent not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the complainant.

- x. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent to provide the exact lay out plan of the said unit.
- xi. Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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 has contested the complaint on the following grounds:

- a. That the complainant approached the respondent for purchase of the premises, whereby, the complainant and the respondent entered into a builder buyer's agreement dated 08.02.2016 with the respondent for purchase of the premises for a total sale consideration of Rs19,98.000/- (exclusive of taxes, GST and other cess(s) payable under any other statute).
- b. That the complaint, as preferred by the complainant, is not maintainable before this Authority in its present form, inasmuch as the complainant has failed to approach this forum with clean hands-an essential precondition for invoking the equitable jurisdiction of this Authority. The complainant has, with deliberate intent, suppressed material and relevant facts which bear directly upon the merits of the matter and which, had they been disclosed, would have materially altered the nature of the relief sought. It is a time-honoured and foundational principle of equity that "he who seeks equity must do equity" and "he who comes into equity must come with clean hands". The act of concealment, whether by commission or omission, not only vitiates the sanctity of the pleadings but also renders the claim liable to be dismissed on the threshold, for lack of bona fides and candour. The suppression of pertinent facts, whether

inadvertent or calculated, undermines the credibility of the complainant's case and amounts to a grave abuse of the process of law.

- c. That as per the terms of the BBA, the respondent was liable to deliver the possession of the premises and subsequent execution of the conveyance deed in favour of the complainant, only on the complainant having discharged all the due obligations he is bound to pay as per the terms of the BBA. That the respondent has on several occasions requested and reminded the complainant to fulfil his due obligations as per the terms of the BBA, but to no avail, the complainant has been persistent in his default.
- d. That it will be a travesty of justice, violation of the principle natural justice and contrary to laudable object behind enacting RERA Act, 2016 if the appellant company made to suffer in this way at the hands of a dishonest allottee who has not made the timely payments in the first place. Reliance is placed on Newtech Developers and Promoters Pvt. Ltd. Vs State of UP and Ors. Civil Appeal No. 6745-6749 of 2021 passed by the Hon'ble Supreme Court of Hon'ble Supreme Court.
- e. That the very foundation of the complainant's right to maintain the present complaint is predicated upon the due and faithful discharge of his contractual obligations under the BBA. However, it stands as an admitted position that the complainant has failed to remit the full and final sale consideration, as stipulated under the BBA. In such circumstances, the complainant, having himself committed a material breach of the terms of the contract, cannot be permitted to invoke the jurisdiction of this Authority or seek redressal of alleged grievances arising therefrom. It is a well-settled principle of equity and jurisprudence that one who seeks equity must come with clean hands and must have fulfilled his own

obligations before asserting any claim against another. The complainant's continued non-compliance with the essential terms of the BBA renders his cause of action misconceived and unsustainable. Therefore, in the absence of fulfilment of his own contractual liabilities, the Complainant can claim no enforceable right in law, and as such, the present complaint deserves to be rejected in limine for want of locus and maintainability.

- f. That a bare and harmonious reading of the aforementioned Clauses of the BBA leaves no room for doubt that the timely payment of instalments constitutes the very essence and foundation of the BBA. The BBA, in its express terms, underscores the fundamental importance of strict adherence to the agreed payment schedule, treating such adherence as a condition precedent to the continuance of reciprocal obligations. In this backdrop, the admitted and uncontested default on the part of the complainant, in failing to honour the stipulated payment milestones, strikes at the root of the contractual relationship. Having himself disregarded the core covenant of timely performance, the complainant cannot now be permitted to invoke the machinery of this Authority in pursuit of reliefs that presuppose compliance with obligations he has woefully failed to discharge.
- g. That a party in breach cannot be heard to complain of the consequences of his own default. The invocation of jurisdiction by a defaulting party, who stands disentitled by virtue of his own conduct, is not only legally untenable but also offends the equitable principles that underpin the administration of justice. In such a situation, the present complaint is nothing more than an impermissible attempt to secure advantage despite contractual non-performance, and is liable to be dismissed as wholly devoid of merit and maintainability.

- h. That the conduct of the complainant, marked by inordinate delay, disregard for contractual obligations, and a conspicuous want of diligence, unequivocally points to the inescapable conclusion that any delay, if at all occasioned in handing over possession, stands solely and entirely attributable to the complainant's own lethargy and non-compliance.
- i. The complainant, having failed to discharge his reciprocal obligations under the BBA with reasonable promptitude, cannot now shift the burden of his own default upon the shoulders of the respondent. Such apathetic and indifferent conduct strikes at the very root of good faith and contractual discipline and renders untenable any grievance premised on alleged delay. It is a settled principle of equity and jurisprudence that one who seeks equity must do equity, and that no party can take advantage of his own default. Therefore, the respondent cannot, in law or equity, be saddled with consequences arising from the complainant's own failure to adhere to the essence of the bargain.
- j. That it is clearly evident from the aforesaid approvals granted by the various authorities, the respondent was entitled to complete and build the project till 22.01.2020. However, due to the outbreak of the pandemic Covid-19 in March, 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view of the difficulties in completing the project by real estate developers, the Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter due to the second covid-19 wave from January to May 2021 once again the construction activities came to a standstill. The pandemic led to severe shortage of labour which resulted in the delay in completing the

construction of the project for which the time of 6 months granted by the Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid-19 lockdown. Furthermore, the pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent in a financial crunch, which was beyond the control of the respondent.

- k. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, Environment Pollution (Control and Prevention) Authority, National Capital Region, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period.
- l. That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance whichever is later, was incumbent upon the complainant making timely payments. The complainant, in the present matter, have failed to make timely payments and there were substantial delays in making the payments of the due instalments as is evident from the demand letter.
- m. That the present project is an affordable group housing project being developed in accordance with the provision of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the respondent was paid the

allotment price in instalments. Though, the allotment price was fixed by the Government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost has increased the manifolds but the Government of Haryana had failed to increase the allotment price. The Government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of Affordable Housing Policy, 2013.

- n. That the project Riddhi Siddhi, Sector-99, Gurugram is an affordable group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013, wherein the Government of Haryana has set a razor thin margin to make housing available for all. Thus, the grant of interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as applicable to other normal group housing real estate projects is wholly unreasonable and unjust, will impose unnecessary financial burden on the respondent and it shall have a cascading effect in the development and construction works of the project and in obtaining all other relevant approvals.
- o. That since the said project is located at a prime location near the Dwarka Expressway, Gurugram and there is huge premium in the open market on the flats situated in said project which would compensate the allottees of the project in more than adequate manner including any compensation for the delay in delivery of the project. This is further to note here that the respondent is not seeking any enhancement of price or payment

other than what has been prescribed under the Affordable Housing Policy, 2013.

7. 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 parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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 objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, demonetization and implementation of GST and outbreak of Covid-19 pandemic, etc. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the events of demonetization and the implementation of GST are in accordance with government policy and guidelines. Therefore, the respondent cannot categorize them as force majeure events. Thus, the same is devoid of merits and Lastly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was 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. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.**
- G.II Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.**
- G.III Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed.**
- G.IV Restrain the respondent from raising fresh demand for payment under any head, as the construction is abundant at the project site.**
- G.V Direct the respondent to quash the offer of possession for fit out dated 28.06.2023 and issue fresh offer of possession after obtaining OC and without any illegal charges which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the Complainant.**
- G.VI Direct the Respondent not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the Complainant.**

13. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. In the present complaint, the complainant had booked a unit and vide allotment letter dated 06.09.2015, allotted a unit bearing no.1006, 10th floor, Tower-T3, having 487 sq. ft. (carpet area) in project "Riddhi Siddhi" situated at Sector-99, Gurugram, being developed by the respondent. Thereafter, a buyer's agreement was executed interse parties on 08.02.2016. The allottee had paid an amount of Rs.22,47,579/- out of total sale consideration of Rs.19,98,000/-.

15. As per clause 8.1 of the apartment buyer's agreement dated 08.02.2016 provides for handing over of possession and is reproduced below for ready reference:

8. Handing over of possession

8.1 Expected Time for Handing over Possession

"Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authority(ies), the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder."

(Emphasis supplied)

16. The due date of possession of the apartment as per clause 8.1 of the apartment buyer's agreement is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020. However, the offer of possession was made by the respondent to the complainant on 24.06.2023.

17. It is necessary to clarify whether intimation of possession dated 24.06.2023 made to complainant-allottees tantamount to a valid offer of possession or not? The Authority is of considered view that a valid offer of possession must have following components:

- a. Possession must be offered after obtaining occupation certificate.**
- b. The subject unit should be in a habitable condition.**
- c. The possession should not be accompanied by unreasonable additional demands.**

18. In the present matter, the respondent has issued intimation of possession with respect to the allotted unit on 24.06.2023 i.e., before obtaining completion certificate (CC)/ part CC from the concerned department. Therefore, no doubt that the offer of possession has been sent to the complainant but the same is for fit outs. Thus, the offer of possession dated 24.06.2023 is an invalid offer of possession, as it triggers component (a) of the above-mentioned definition.

19. In the present complaint, the complainant intends to continue with the project and are 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.

(Emphasis supplied)

20. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she 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.

21. 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.
22. 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., 27.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
24. The Authorized representative of the respondent during proceedings dated 27.11.2025 stated that the construction is completed and an application for the grant of occupation certificate has already been made to the concerned authority on 22.12.2022 but occupation certificate is yet to be obtained.
25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8.1 of the buyer's agreement, the due date of handing over of possession of the unit in question is 22.01.2020 (calculated from the date of environmental clearance, being later). A document is placed on record by the respondent which shows that an

application for grant of occupation certificate was made on 22.12.2022 which is yet to be approved by the competent authority. Therefore, the respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer the possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 08.02.2016 executed between the parties.

26. Section 19(10) of the Act, 2016, it is the duty of the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of occupation certificate. This 2 months' time is reasonable time to be given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit and other procedural documentations etc.

27. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, 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.

28. Further, as per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, during proceedings dated 27.11.2025, the authorized representative of respondent-promoter submitted that the respondent had already applied for occupation certificate on 22.12.2022 after obtaining pre-requisite approvals from the concerned departments. It is unsatisfied that even after the lapse of more than 5 years from the due date of possession, the respondent has not obtained OC from the competent authority. Therefore, the Authority observes that the respondent is duty bound to obtain the OC and handover the possession to the complainant only after receipt of OC from the competent authority. In view of the above, the respondent is further directed to handover possession of the unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 up on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

G.VII Direct the respondent to refund the Rs.26,536/- collected on account of service tax and to provide benefit of Rs.25,067/- on account of GST benefit.

29. The complainant has sought the relief with regard to direct the respondent to give benefit of Rs.25,067/- on account of GST benefit/ anti-profiteering credit/input tax credit to the complainant and charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation

of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

30. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of Section 171 of HGST/CGST Act, 2017. In the event, if the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of Section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under Section 171 of the HGST Act against the respondent-promoter.

G.VIII Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

31. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to his rights as has been decided by the Authority in complaint bearing no. **4031 of 2019** titled as ***Varun Gupta V. Emaar MGF Land Ltd.***

G.IX It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent to provide the exact lay out plan of the said unit.

G.X Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

32. The complainant is seeking direction to respondent to provide the exact layout plan. It is observed by the Authority, that as per Section 19(1) of the Act, 2016, it is the right of every allottee(s) to obtain the information relating to the sanctioned plans, layout plans etc. The relevant part of Section 19(1) is reproduced for ready reference:

19(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

33. Accordingly, the Authority hereby directs the respondent/promoter to provide the exact layout plan of the subject unit to the complainant/allottee within 30 days from the date of the order.

H. Directions of the Authority:

34. 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 delay interest to the complainant against the paid-up amount of Rs.22,47,579/- at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the competent authority plus two months or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*
- ii. The arrears of such interest accrued from 22.01.2020 till the date of order by the Authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules.
- iii. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

- iv. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and complainant(s) are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period.
- v. The respondent is further directed to handover the physical possession of the unit to the complainant complete in all aspect of buyer's agreement, as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and the complainant is also obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- vi. The respondent is further directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant.
- vii. The respondent is further directed to provide the exact layout plan of the subject unit to the complainant/allottee within 30 days from the date of the order.
- viii. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement dated 08.02.2016 as well as Affordable Housing Policy, 2013.

35. Complaint as well as application, if any, stands disposed of accordingly.

36. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.11.2025