

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

Complaint no. : 1707 of 2023
Date of complaint : 18.04.2023
Date of decision : 31.10.2025

1. Rahul Singh
2. Rachna Singh

Address: Flat no. 1251, Tower 1, ATS Triumph,
Sector-104, Gurugram-122001, Haryana

Complainants

Versus

M/s Anand Divine Developers Pvt. Ltd.

Office at: 711/92, Deepali, Nehru Place, New
Delhi- 110019

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sidharth Shankar (Advocate)
Ms. Tanya (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/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. N.	Particulars	Details
1.	Name of the project	"Triumph" at sector 104, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	14.093 acres
4.	DTCP license no. and validity status	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
5.	Name of licensee	M/s Great Value HPL Infratech Private Limited M/s Kanha Infrastructure Private Limited
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	1251, 25 th Floor, Tower 1 (as per BBA on page no. 36 of complaint)
8.	Unit area admeasuring	2290 sq. ft. (as per BBA on page no. 36 of complaint)
9.	Date of application	29.04.2013

		(page no. 35 of complaint)
10.	Date of builder buyer agreement	12.07.2013 (page no. 34 of complaint)
11.	Tripartite agreement	12.05.2014 (page no. 135 of complaint)
12.	Possession Clause	<p>18: Time of Handing Over Possession</p> <p>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be offered by the Company by the Allottee within a period of 36 months with a grace period of 6 months from the date actual start of construction of a particular Tower Building in which the registration for allotment is made. Such date shall herein after referred to as stipulated date, subject always to timely payment of all amounts including the Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, registration Fees and other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular building in which the said apartment is allotted shall be laid as per certification by the company's architect/engineer-in-</p>

		charge of the complex and the said certification shall be final and binding on the Allottee
13.	Date of commencement of construction	Not provided on record
14.	Due date of possession	12.01.2017 [calculated from the date of agreement i.e., 12.07.2013 as date of commencement of construction of tower is not provided on record]
15.	Total sale consideration	Rs. 2,17,56,550/- (as per payment plan on page no. 58 of complaint)
16.	Amount paid by the complainant	Rs. 2,26,28,760/- (as per receipts of payment)
17.	Occupation certificate	28.05.2019 (page 59 of additional documents filed by respondent)
18.	Offer of possession	30.05.2019 (page no. 43 of reply)
19.	Possession Letter	06.08.2020 (page no. 161 of complaint)
20.	Conveyance deed	11.12.2023 (page 32 of additional documents filed by respondent)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That the complainants, induced by various advertisements issued by the respondent for their residential group housing project namely "Triumph" situated at Sector 104, Gurgaon, Haryana jointly applied for allotment of a residential apartment/flat bearing no. 1251 situated at 25th floor of tower/building no. 1, admeasuring super area of 2290 sq. ft. alongwith two (2) reserved car parking on 24.04.2013.
 - II. That while advertising for the said project, the respondent had represented that the said project is being developed by well-known ATS builders and an internationally styled luxury residence which is equipped with ultra-modern luxury amenities.
 - III. That the basic sales consideration of the said flat was Rs.2,01,97,800/- whereas total sale consideration of the said flat was Rs.2,17,56,550/- which includes Rs.6,00,000/- for (2) reserved car parking spaces @Rs.3,00,000/- per car parking space, interest free maintenance security (IFMS), power back-up charges and other charges.
 - IV. That the complainants were induced into signing a pre-printed buyer's agreement on 12.07.2013 providing details terms and conditions for purchase of the said flat. The complainants had no option but to sign on the dotted line after having already paid about Rs.41,89,347/- to the respondent.
 - V. That clause 10.3 of buyer's agreement dated 12.07.2013, provides that in case of delay in of payments, the company shall charge interest @18% p.a. on due amount for the delayed period.
 - VI. That clause 18 of buyer's agreement dated 12.07.2013 provides the time period for handing over the possession of the said flat. In terms of the said clause, the respondent was required to handover the

possession of the said flat within a period of Thirty Six (36) months with a grace period of six (6) months from the date of start of construction of particular building/tower. In this regard, it is stated that possession of the said flat was required to be handed over to the complainant by the respondent on or before July, 2016, since the construction of the building was started in the month of July, 2013, in terms of demand latter dated 10.07.2013 raised by the respondent herein. Even if, a period of six (6) months is taken as varied/increased the respondent was required to hand over the possession of the said flat by end of 'January, 2017'.

- VII. That the pursuant to various demand raised by the respondent through demand letters, the complainants made various payments to the respondent, either by way of cheque or electronic transfer (RTGS), against which acknowledgment receipts were duly issued by the respondent. The complainants have jointly paid a total sum of Rs.2,26,28,760/- to the respondent, against the total sale consideration of the said flat.
- VIII. That the complainants have also availed a home loan of an amount of Rs.1,60,00,000/- from State Bank of India, in order to get financial assistance, to purchase the said the said flat. In this regard, a tripartite agreement was executed between the complainant, respondent and State Bank of India.
- IX. That the complainant no. 1 visited the office of the respondent several times and met various officials and made requests to handover the possession of the said flat but to no avail.
- X. That vide email dated 31.05.2019 the complainants received a demand letter dated 30.05.2019 issued by the respondent offering the possession of the said flat on receipt of " Occupancy Certificate", while

asking the complainants to make the payment of outstanding amount and complete the possession formalities of the said flat. A demand letter for a total amount of Rs. 19,41,576/- including dues of BSP of an amount of Rs.16,09,889/- and other charges against interest free maintenance deposit of Rs. 50,000/-, power back up of Rs. 59,000/- and electricity meter charges of Rs. 29,5000/-, was also annexed with the said Letter dated 30/05/2019.

- XI. That another demand letter for an amount of Rs. 2,01,473/- towards 'HVAT' was also annexed with the said email dated 31.05.2019.
- XII. Since, the demand made in the said demand letters dated 30.05.2019, were exorbitant, the complainant vide email dated 16.06.2019 raised queries and sought clarifications regarding the said charges including (i) deemed deductible (ii) GST (iii) demand of HVAT (iv) compensation for delay in handing over the possession and (v) and period of extra ninety (90) days, to be taken after payment of final payment. Reminders were given vide emails dated 19.06.2019, 26.06.2019, 27.06.2019 & 06.07.2019. Finally, vide email dated 09.07.2019, the respondent replied the said queries raising frivolous pleas and objections whereby, the compensation for delay in handing over the possession was rejected, on a very flimsy ground that payment of installments was made late.
- XIII. Since, the issue of payment of compensation on delayed possession was not resolved by the respondent on 29.07.2019, the complainant made payment of a total sum of Rs. 3,39,973/- against the demand of (i) interest free maintenance deposit, power back up charges, electricity meter charges and Rs. 2,01,473/- towards HVAT.
- XIV. That the complainant further vide email dated 01.08.2019 raised the issue of compensation for delayed possession. Vide the same email

dated 01.08.2019, the complainant requested the respondent to send the payment receipts from 2015 onwards.

XV. Thereafter, upon several visits and meetings with the respondent's representative in their head office situated at Noida, the respondent had agreed to pay an amount of Rs.3,31,956/- on account of delayed compensation, calculated at Rs.5/- per Sq. Ft. for a total period of Twenty Nine (29) months i.e. from January, 2017 to May, 2019.

XVI. Since, the complainants had already paid total amount of Rs.2,26,28,760/-i.e. more than 100% of the total sale consideration of the said flat and was also paying rent & repaying the home loan, availed from the Bank, the complainants had no other option but to accept the physical possession of the said flat 'as it is' and on the terms of conditions of the Respondent, while executing Tripartite Maintenance Agreement' dated 'NII' and 'Indemnity-Cum-Undertaking', containing either blank or illegitimate clauses, while illegally binding the complainants.

XVII. That after shifting to the said flat, the complainants have realized and have also come to know that all the basic amenities and facilities for which the complainants were charged by the respondent are not provided by the respondent and the said flat is not fit for living. It is stated that the design and architecture of the said flat is not proper. The construction material, fitting and fixtures used in the said flats are of sub-standard and poor quality. Few of the defects as noted by the complainants are as follows:

- **Flooring of the said flat**
 - Master Bedroom: Wooden flooring has air pockets/base materials not used evenly. Upon walking on it at some places, one

can feel a depression/sinking of floor far greater than rest of the room.

- Living + 2 + 3 bedroom + Kitchen - Both marble as well as tiles have air pockets/base material not used evenly. Creates a cracking / hollow noise on walking. Anomaly is present in great proportions. Below standard construction. Further, Tiles are chipped at many places, which came to light after deep cleaning and have been filled with some material to hide it.

- **Bathrooms**

- Finishing is absolutely pathetic. On cleaning cement starts coming out at junctions of tiles. Granite counter for wash-basin is chipped at edges, slab itself swivels. Tiles are chipped. Further, the sanitary fitting and fixtures are of inferior quality, which is in contrary to the specifications.

- **UPVC Doors and Windows (Kitchen + bathrooms)**

- Almost all sliding doors have locking issues. These doors have 1 portion as fixed /non-moving door, which have air leakages in all doors. When wind speed is higher, it creates a Venturi effect resulting in howling sound in the whole house. Again, all windows in bathrooms and kitchen have same issue as well-as kitchen utility balcony door.
- The SS channel/operating mechanism in windows is already showing signs of rusting. Since, there is no sound proofing and all the ambient noise including sound of traffic and train passing by behind the project complex is heard inside the house with every door shut. Further, the quality of UPVC and glass installed with these fixtures are below standard and are not as per specification.

- **Modular wardrobes**

➤ Finishing/quality and functionality of all the wardrobes are of sub-standard and channels are not working properly as these are sticking. Further, wardrobes/ dressing area are designed and installed very poorly and encircling huge cubic volume of space in epic proportions, with an object to save the costing.

- **Doors**

➤ In terms of specifications, doors were supposed to be Flush shutters with polished wood veneer and solid wood/timber frame. Whereas, in reality, the doors are very flimsy. Frame of the doors have layers with gaps in them. At certain places the door frame has been fixed with small minute cutout of wood just to get the symmetry leaving a gap between the wall and door frame. Doors are epitome of inferior work.

- **Locks**

➤ In terms of specifications, all the locks were supposed to be aluminum coated of branded make. However, all the locks installed therein, are already showing signs of rust, being made of very cheap materials and are a disgust to operate, since not working smoothly.

- **Modular Kitchen**

➤ Quality of construction/finishing of the Kitchen is very poor and there are several defects in the kitchen and small finishing touch problems persist. Modular kitchen cabinets and drawers are not function properly and are sticking. Kitchen sink tap is not installed properly, causing water spread outside the sink.

- **Home Automation**

- In terms of the specification, the entire flat was supposed to be installed with home automation system, before HVAC and lighting which is not installed at all.
- **Water sprinklers for firefighting**
- Though, this protection mechanism is of prime importance, the water sprinklers installed for firefighting have already started rusting and likely to be replaced in few days, since materials used for the same are sub-standard.
- **Car Parking**
- It is stated that the Complainants have already paid for car parking spaces (2 No. of car) on reserved basis, which were required be earmarked and to be allotted, along with handing over the possession of the flat. However, despite several request, no reserved car parking spaces have been provided to the Complainants, till date
- **Quality of construction** is very poor and there are several defects in the flat, such as plaster/cements of the wall/ ceiling are coming out, in a very short period of construction. Seepage has started in bedrooms, resulting in plaster and paints, chipping out from walls. It is further stated that finishing work of the said flat, such as cementing, painting, etc. are of sub-standard quality, giving a very ragged look to the Flat.
- **Lifts** are not being maintained properly and due to which, Lifts get breakdown frequently, which is dangerous for life of the residents.
- **Non-existence of Club/ Multipurpose Hall/ Gym**, and non-operational swimming pool, and other facilities, as per buyer's

agreement. The complainants have already made payments against these charges.

XVIII. That after shifting to the said flat on 9th November, 2020 the complainants had made several requests to Mr. Ujjawal (Project Manager and the representative of the respondent available at the project site to rectify the said discrepancies. However, same have not been rectified till date.

XIX. That respondent has failed to deliver possession of the Flat by the due date i.e July, 2016, thereby failing to fulfil its contractual obligation. The physical possession of the flat was given only on 06/08/2020 i.e., after a considerable delay of almost four (4) years, which is in violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).

- I. Direct the respondent to pay delay possession interest of an amount of Rs. 89,47,851/- being the interest @ 10.75% on the paid amount of Rs. 2,08,02,956/- for delay in handing over the possession of the said flat for a period of 48 months from 01.08.2016 to 30.07.2020.
- II. Direct the respondent to rectify and make good all the defects, mentioned in complaint.
- III. Direct the respondent to reserve and allot 2 car parking spaces to the complainant at a convenient location to his flat and tower lift.

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 following grounds:

- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
- II. That the respondent has filed the present reply within the period of limitation as per the provisions of Real Estate (Regulation and Development) Act, 2016.
- III. That there is no cause of action to file the present complaint.
- IV. That the complainant has no locus standi to file the present complaint.
- V. That the complainant is estopped from filing the present complaint by his acts, omissions, admissions, acquiescences and latches.
- VI. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 39 of the buyer's agreement.
- VII. That the complainant has not approached this Hon'ble Forum with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
 - A. That the complainant, after checking the veracity of the project namely, "ATS Triumph", Sector 104, Gurugram had applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the documents executed by the parties to the complaint.

That based on the application of the complainant unit no. 1251, Tower no.1 was allotted to the complainant by the respondent.

B. That the buyer's agreement was executed on 12.07.2013. The Real Estate (Regulation and Development) Act, 2016 was not in force when the Agreement was entered into between the complainant and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.

C. That as per clause 4 of the buyer's agreement, the consideration of Rs.2,17,56,550/- was exclusive of other costs, charges including but not limited to EDC/IDC, Power Back up, IFMS, maintenance, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities. As per clause 12 of the buyer's agreement, timely payment by the complainant of the basic sale price and other charges as stipulated in the payment plan was to be the essence of the agreement.

D. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. Clause 18 of the buyer's agreement clearly states that "Barring unforeseen circumstances and Force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be offered by the company to the allottee within a period of 36 months with a grace period of (6) six months from the date of actual start of the construction of a particular tower building in which the registration for allotment is made, such date shall hereinafter referred to as 'Stipulated Date', subject always to timely payment of all amounts including the Basic Sale Price, EDC/IDC, IFMS, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this

regard. The date of actual construction shall be the date on which the foundation of the particular building in which the said apartment is allotted shall be laid as per certification by the company's architect/engineer-in charge of the complex and the said certificate shall be final and binding on the Allottee."

- E. That the possession of the unit was subject to the occurrence of the force majeure events.
- F. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

I) Inability to undertake the construction for approx. 7-8 months

due to Central Government's Notification with regard to

Demonetization: [Only happened second time in 71 years of independence hence beyond control and could not be foreseen].

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 approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During

Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000/- per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs 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 due on account of issues faced by contractor due to the said notification of Central Government.

That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

II) 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 following, 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.

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 is also required to be added for calculating the delivery date of possession.

(III) 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.

(IV) 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. The said period is also required to be added to the timeline for offering possession by the respondent.

G. That the respondent after completing the construction of the unit in question, applied for the grant of the occupation certificate on 29.05.2019 and the same was granted by the concerned authorities on 29.05.2019. The respondent offered the possession of the unit to the complainant vide letter dated 30.05.2019. The complainant was

intimated to remit the outstanding amount on the failure of which the delay penalty amount would accrue. On 29.07.2020, the certificate of possession was handed over to the complainant. Later on 05.08.2020, the handing over of possession letter was duly signed by the complainant. The complainant is not coming forward to take the possession of the unit after remitting the due amount. The complainant is bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges.

H. That the complainant is a real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and they are now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable demands.

E. Written Submission Filed by Respondent

7. That the present complaint is barred by limitation. The possession was offered to the complainant on 30.05.2019 and finally the unit was handed over to the complainants on 05.08.2020. That since then the complainant has been residing and enjoying the property.
8. The Doctrine of Delay and Latches provides that all claims should be brought before the respective courts/forums within reasonable time frame and no litigant who approached court/forum belatedly without any justifiable explanation should be allowed to seek benefit of his negligence.
9. That the complainant has also filed a complaint before the Ld. AO titled *Rahul Singh vs. Anand Divine Developers Pvt. Ltd (C. No. 340 of 2021)* seeking compensation for delayed possession among other reliefs. That

however, during the course of these proceedings the complainant withdrew the relief of the compensation for delayed possession charges and sought liberty to file the same before the Ld. Authority.

10. That the Ld. Authority, under Rule 29(1) of the HRERA Rules have the power to grant liberty to the complainant to seek compensation. However, the same power does not flow vice versa. That the complainant is basing the present complaint on illegal liberty granted by the Ld. AO however, the same is not valid.
11. That the complaint is following the practice of forum shopping and is trying to harass the respondent.
12. That after having taken the physical possession of the unit and after having executed the conveyance deed, the complainant has undergone a complete renovation of the unit, requiring the fittings to be taken apart. Moreover, the Local Commissioner inspected the unit in 2024, however the project has been completed as per the specifications in year 2019 and the occupancy certificate was received by the respondent on 28.05.2019 that is 6 years ago.
13. The unit has been in use by the complainant since more than 4 years which result in normal wear and tear of the unit caused by the regular use of the property. Moreover, it is essential to note that the complainants have started the renovation work in their unit without any knowledge to the respondent. That in such a situation the exact status of the unit, pre-renovation work cannot be ascertained at this belated stage by the Local Commissioner. The complainants have also started the renovation work in their unit, has been noted by the local commissioner in its report dated 29.08.2024.

14. That further, the relief of allotment of two car parking is infructuous as the same has already been allotted to the complainant from the very beginning.
15. That the conveyance deed was executed between the parties on 11.12.2023 marking the end of the contractual relationship between the parties. The complainant had already taken physical possession of the unit on 05.08.2020 and have been enjoying the possession of the unit since.
16. The complainants admitted that the possession was taken over by them only after the complete satisfaction of the unit with regards to the item of works, quality of workmanship, material, specification, fitting and fixture and had also clarified that no claim, whatsoever be raised in the future.
17. 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.

F. Jurisdiction of the authority

18. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

19. 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.

F.II Subject-matter jurisdiction

20. 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.

21. 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.

G. Findings on the objection raised by the respondent

G.I Objection regarding complainant is in breach of agreement for non- invocation of arbitration

22. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.

23. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the

intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on the catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr.* (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

G.II Objection regarding jurisdiction of the complaint w.r.t the agreement executed prior to coming into force of the Act.

24. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the agreement was executed between the parties in the year 2014 i.e., prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
25. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and would be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the

Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

26. Further, in appeal no. 173 of 2019 titled as *Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

27. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

G.III Objection regarding complaint being barred by limitation.

28. The respondent has contended that the present complaint is not maintainable and barred by the law of limitation as the present complaint has been filed after 3 years from the date of offer of possession i.e., 30.05.2019. After going through the documents available on record as well as submissions made by the parties, the Authority is of view that the law of limitation does not strictly apply to the Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights*". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal

circumstances. The authority after consideration of the documents placed on record and the arguments advanced by both the parties is of the view that the due date of possession of the subject unit, as per clause 18 of the builder buyer agreement dated 12.07.2013 comes out to be 12.01.2017. The respondent-promoter offered the possession of the said unit on 30.05.2019 after obtaining OC from the competent authority on 28.05.2019. Thereafter, conveyance deed was executed inter se parties on 11.12.2023. So, limitation if any for a cause of action would accrue to the complainants with effect from 30.05.2019 and not from 11.12.2023. The limitation period of 3 years expires on 30.05.2022.

29. Further, it is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in ***MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020*** has held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
30. In the present matter the cause of action arose on 30.05.2019, when the possession of the unit was offered to the complainants by the respondent. The complainants have filed the present complaint on 18.04.2023 which is 3 years 10 months and 19 days from the date of cause of action. Therefore, after taken into consideration the exclusion period from 15.03.2020 to 28.02.2022 as observed by the Hon'ble Apex above, it is determined that the present complaint is within limitation.

G.IV Objection regarding the complainants cannot claim delayed possession charges after execution of the conveyance deed.

31. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 11.12.2023 and the

transaction between the parties stands concluded upon the execution of conveyance deed.

32. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
33. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.
34. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.

35. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as *Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019)* dated 24.08.2020, the relevant paras are reproduced herein below:

"34. The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

36. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as *Varun Gupta V/s Emaar MGF Land Limited and others* and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.

37. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

G.V Objection regarding force majeure conditions:

38. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during 2015-2016-2017-2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent is regarding various orders of the NGT and demonetisation but all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region were 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. The plea regarding demonetisation is also devoid of merit. Further, any contract and dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees have not paid instalments regularly but all

the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

H. Findings on the relief sought by the complainant.

H. I Direct the respondent to pay delay possession interest of an amount of Rs. 89,47,851/- being the interest @ 10.75% on the paid amount of Rs. 2,08,02,956/- for delay in handing over the possession of the said flat for a period of 48 months from 01.08.2016 to 30.07.2020.

39. 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."

40. Clause 18 of the buyer's agreement provides for handing over of possession and is reproduced below:

18: Time for handing over possession

Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be offered by the Company by the Allottee within a period of 36 months with a grace period of 6 months from the date actual start of construction of a particular Tower Building in which the registration for allotment is made. Such date shall herein after referred to as stipulated date, subject always to timely payment of all amounts including the Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, registration Fees and other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular building in which the said apartment is allotted shall be laid as per certification by the

company's architect/engineer-in-charge of the complex and the said certification shall be final and binding on the Allottee. -

41. 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.

42. 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.

43. 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%.

44. 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;"*

45. 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 it in case of delayed possession charges.
46. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 18 of the agreement executed between the parties on 12.07.2013, the possession of the subject apartment was to be delivered within a period of 36 months with a grace period of 6 months from the date of actual start of construction of particular tower. The date of start of construction is not on record therefore, the due date is calculated from the date of execution of agreement dated 12.07.2013 which comes out to be 12.07.2016. Further there shall be additional grace period of 6 months as mentioned in the possession clause for unqualified reasons. Therefore, the due date of handing over possession comes out to be 12.01.2017. The occupation certificate for the project was received on 28.05.2019 and possession was offered on 30.05.2019. The respondent has failed to handover possession of the subject unit till the due date of possession. The authority is of the considered view that there is delay

on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement.

47. 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 28.05.2019. The respondent offered the possession of the unit in question to the complainants only on 30.05.2019. 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 complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants 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 but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 12.01.2017 till the date of offer of possession (30.05.2019) plus two months i.e., 30.07.2019.
48. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 12.01.2017 till the offer of

possession (30.05.2019) plus two months 30.07.2019 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.

49. The respondent has contended that they has already paid some amount on account of compensation for delay in handing over of possession. The Authority is of the view that the amount of compensation, if any paid by the respondent to the complainants then that shall be adjusted.

H.II Direct the respondent to rectify and make good all the defects, mentioned in complaint.

H.III Direct the respondent to reserve and allot 2 car parking spaces to the complainant at a convenient location to his flat and tower lift.

50. The authority is of the view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee. It is important to note that the purchaser will not loose their right to claim compensation for delayed handing over of possession.

I. Directions of the authority

51. 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 delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 12.01.2017 till the offer of possession plus two months i.e., 30.07.2019 at the prescribed rate 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

ii. 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.

52. Complaint stands disposed of.

53. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025



HARERA
GURUGRAM