

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

Complaint no. : 4038 of 2025
Date of complaint : 19.08.2025
Date of order : 09.01.2026

1. Ankur Gupta,
2. Shweta Gupta,
Both R/o: - 175, Nandanbaug Bunglows,
Behind Applewoods, Sheila, Ahmedabad, Gujarat.

Complainants

Versus
M/s Eminence Townships India Pvt. Ltd.
Regd. Office at: - 44, Ground Floor, Sector-32,
Gurugram-122001.

Respondent

CORAM:

Arun Kumar

Chairman

APPEARANCE:

B.L Jangra (Advocate)
Bhavishya Sandhu (Advocate)

**Complainants
Respondent**

ORDER

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

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	Eminence Kimberley Suites, Sector 112, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project Area	2.875 acres
4.	DTCP License No.	35 of 2012 dated 22.04.2012 valid up to 21.04.2025
5.	Name of Licensee	KPS Colonisers Pvt. Ltd.
6.	RERA Registered/ Not Registered	74 of 2017 dated 21.08.2017 valid up to 30.12.2018 Extension of RERA registration HARERA/GGM/REP/RC/74/ 2017/EXT/100/2019 Dated-12.05.2019 valid up to 31.12.2020
7.	Unit no.	B-0607, 6 th Floor (As per page no. 34 of the complaint)
8.	Unit admeasuring	601 sq. ft. (super area) (As per page no. 34 of the complaint)
9.	Date of execution of buyer's agreement	12.09.2013 (As per page no. 32 of the complaint)
10.	Possession clause	<i>Schedule for possession of the said unit 27.</i> <i>The company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the allottee(s) of sale price and other charges due and payable according to the payment plan applicable to him/her/them and/or as demanded by the company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the said unit(s) shall, however, be offered only after grant of completion/occupation certificate from the competent Authority.</i> <i>(Emphasis supplied)</i>

		(As per page no. 43 of the complaint)
11.	Date of start of the ground floor slab	Document not on record
12.	Due date of delivery of possession	12.03.2017 (Due date has been calculated as 36 months from the date of execution of BBA plus grace period of 6 months)
13.	Total sale consideration	Rs.39,39,672/- (As per structure of payments on page no. 58 of the complaint)
14.	Total amount paid by the complainant	Rs.38,70,234.79/- (As per page 82 of complaint)
15.	Occupation Certificate	11.07.2019 (As per page no. 78 of the complaint)
16.	Offer of possession	24.07.2019 (As per page no. 80 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants had booked a flat/unit, bearing no. B-0607 located on 6" Floor, having super area of 601 sq. feet, in the respondent's project "Eminence Kimberly Suites", against a for total sale consideration of Rs.39,39,672/- & the complainants had paid an amount of Rs.3,00,000/- at the time of booking on 24.04.2012 by cheque which was duly received and acknowledged. Subsequent to the booking of the said unit, a notarized builder buyer agreement dated 12.09.2013 was executed between the complainants and the respondent. It is relevant to mention here that the complainants opted for construction linked payment plan more particularly mentioned in the "Annexure III" of the BBA dated 12.09.2013.
- II. That the respondent mischievously did not mention specific date of handing over the physical possession of the flat/unit but it is mentioned that as per Clause No. 27 of the builder buyer agreement

the respondent was under a contractual obligation to complete the construction and handover physical possession of the said flat/unit within 36 months with a six-month grace period from the date of execution of builder buyer agreement i.e. within a period of 42 months, thus possession was to be handed over on or before 11.09.2017.

- III. That the complainant had already paid sum of Rs.38,70,234/- till date as per the construction linked payment plan. All the said payment stood paid by 2017. The complainant has paid more than 95% of the total sale consideration of the flat/unit but the respondent had neglected to complete the project till date and handover the possession.
- IV. That the complainant had been regularly calling and visiting the respondent office since 2017 seeking information about completion and possession of project writing numerous mails regarding progress of the project but of no consequence. The complainants is ready to pay the legitimate balance demand as may be directed by this Authority at the time of possession.
- V. That it has come to the knowledge of the complainants, the respondent had obtained occupation certificate on 11.07.2019 issued by the DTCP.
- VI. That the complainants were surprise and shock to receive the possession letter issued by the respondent reflected an inflated final amount of Rs.42,32,925/-, thereby wrongfully increasing the total cost of the unit. Consequently, an arbitrary demand of Rs.3,62,690/- was shown as outstanding against the complainants, which is baseless, unjustified, and contrary to the agreed terms of the BBA. The Respondent has unilaterally altered the financial terms and wrongly included excess charges, which is a clear violation of the agreement and is liable to be set aside.

VII. That the respondent after obtaining OC sent offer of possession letter dated 24.07.2019 directing the complainant to take physical possession of the said unit/flat. That on visiting the site the complainants had found the project had still remained incomplete. The internal roads have not been constructed, the common area comprising of parking space, the internal roads, landscaping work is incomplete, no regular electricity connection for electricity department has been obtained nor independent electricity meters have been installed, the respondent is supplying electricity through temporary arrangements using gen-sets and charging heavily for the same, besides the sewage work is still under process and lifts are also not functional and only service lifts are operational so the project is not fit for habitation.

VIII. That due to the incomplete condition of the project and absence of basic amenities, the complainants declined to accept possession and requested the respondent to offer possession only after completion of the project.

IX. That the complainants had approached the respondent multiple times for taking possession and had sent numerous mails calling upon to complete the project and hand over the possession but the respondent has miserably failed to do the same in breach of builder buyer agreement.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges as per the Act.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been

committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent vide reply dated 12.12.2025 contested the complaint on the following grounds: -
 - i. That the complainant has correctly stated that the possession was required to be delivered within 36 months (plus 06 months) from the date of casting of Ground Floor Roof Slab of particular tower in which the unit is situated and the date of start of construction in which the unit of the complainant is situated, the Ground Floor Roof Slab got casted on 01.06.2014. However, it is stated that this date of possession was governed with the other terms and conditions i.e. force majeure conditions and delay on account of conditions beyond the control of the respondent and accordingly, on account of government delays the due date of possession on account of multiple Force Majeure Conditions as stated below was 05.06.2020.
 - ii. That the respondent applied for the revision of the building plan, in order to ensure a better and optimized building layout and better drainage systems in the building on 04.10.2016 and received an in-principle approval for the same on 01.09.2017, whereafter the suggestions were invited from all the existing Allottee (s) including the complainant, and it was only after due scrutiny of the compliance of the letter dated 01.09.2017 by the Learned STP, the Learned Chief Town and Country Planning, Haryana at the office of Director, Town and country planning Department approved the building plan on 08.02.2018. Thus, thereby causing a delay of 493 Days i.e. the intervening period between 01.04.2016 to 08.02.2018 on account of departmental / government delays in approval of revised "building

plan", thereby making the due date for offer of possession as 07.04.2019.

iii. That further, immediate to receipt of the revised building plans, the respondent on 19-03-2018, applied for renewal of license for the said project, and it was only on 03-08-2018, the DTCP, Chandigarh reverted back to the respondent company with its demand, however, due to some accounting error on the part of DTCP, Chandigarh an erroneous demand of EDC /IDC Charges got raised and further it was only on account of efforts of the respondent company, the said demand was rectified and reduced from Rs.488.93 lakhs to Rs.366.63 lakhs on 01-02-2019, thereby reducing the EDC/IDC dues by Rs.122.30 Lakhs. It is noteworthy to state that in an event a wrong EDC/IDC charge would have got levied and payable by the allottees of the project including the present complainant and thus, it shall not be wrong to state that the respondents should not be penalized for acting in the interest of the customers. Irrespectively, due to the governmental delays caused due to incorrect EDC/IDC demands from 19.03.2018 till 01.02.2019, the period of delay of 319 Days is due to be exempted on account of force majeure conditions and the due date for possession stood extended upto 20.02.2020.

iv. That even post existence of the force majeure condition, and exemption on the said account, the respondent continued with the works at the project site and immediately upon receipt of revised/ corrected EDC/IDC demand and renewal of License on 13.03.2019, the respondents applied for Part Occupancy Certificate to DGTCP, Haryana at Chandigarh on 27-03-2019 and subsequently the DGTCP, Haryana post its inspection & as per provisions of applicable law, have already granted the Occupancy Certificate on 11-07-2019. It is further

submitted that the period taken by the government office for grant of part occupancy certificate from the date of application is also covered under force majeure conditions.

- v. That it is noteworthy to state here that even after existence of the force majeure condition and numerous occasions of ban of construction by NGT and other district authorities due to increase in pollution levels, the respondent was excessively diligent in executing the works thus, the possession of the unit was offered soon after the Occupancy Certificate dated 11.07.2019 and hence, the possession was given well before the due date for offer of possession and the offer of possession was issued by the respondent in the name of the complainant on 24.07.2019. Thus, the offer of possession was given to the complainant in a timely manner and even before lapse of the agreed time period as specified in the application form & buyer's agreement.
- vi. That further in accordance with the terms of the buyer's agreement, offer of possession was given on 24.07.2019. Whereafter, after the lapse of 90 days the maintenance charges are applicable and are required to be paid by the allottee of the unit. It is stated that in terms of offer of possession an amount of Rs.3,62,690.86 is due and payable by the complainant since 24.07.2019 i.e. the date of offer of possession and the complainant is liable to pay interest on the said amount till the date of its payment. That in addition dues on account of maintenance charges are also pending and payable by the complainant and in order to evade the liability of due payments, the complainant has filed the present bogus complaint.

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

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

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.

F.I Objections regarding force majeure.

11. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as NGT orders banning construction, Correction of erroneous EDC/IDC demand, governmental delays etc. After considering the above, the Authority observes that as far as the contention of the respondent regarding banning of construction in the NCR region is concerned, the same was banned 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. Further, time taken in governmental clearances cannot be attributed as reason for delay in project. Furthermore, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Moreover, the grace period of six months on account of force majeure circumstances has already been granted to the respondent-promoter being unqualified. Thus, no further relaxation over and above this grace period of 6 months can be granted to the respondent-promoter.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover possession, execute conveyance deed and to pay delay possession charges as per the Act.

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

13. Clause 27 of the buyer's agreement provides for handing over of possession and is reproduced below:

"Schedule for possession of the said unit

27.

The company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the allottee(s) of sale price and other charges due and payable according to the payment plan applicable to him/her/them and/or as demanded by the company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the said unit(s) shall, however, be offered only after grant of completion/occupation certificate from the competent Authority..."

(Emphasis supplied)

14. The respondent/promoter has proposed to handover possession of the subject unit within a period of 3 years from the date of start of the ground floor slab of the particular tower in which the booking is made plus 6 months grace period. The respondent vide its reply has submitted that the ground floor slab of the particular tower in which the unit of the complainants is situated was casted on 01.06.2014. However, no document to substantiate the claim of the respondent has been placed on record. In view of the above, the due date is being calculated as 36 months from the date of execution of buyer's agreement i.e. 12.09.2013. Further, the said grace period of 6 months is allowed to the respondent being unqualified. Therefore, the due date of possession comes out to be 12.03.2017.

15. **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.

17. 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.
18. 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., 09.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
16. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 27 of the buyer's agreement, the due date of possession comes out to be 12.03.2017 for the reasons quoted above. The occupation certificate was granted by the concerned authority on 11.07.2019 and thereafter, the possession of the subject unit was offered to the complainants vide letter dated 24.07.2019. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession

of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.09.2013 to hand over the possession within the stipulated period.

17. 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 11.07.2019. The respondent offered the possession of the unit in question to the complainants only on 24.07.2019, 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 complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
20. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent/promoter is established. As such the complainants are entitled to delay possession charges at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 12.03.2017 till offer of possession plus two months or actual handing over of possession, whichever is earlier, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.
21. 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 complainants. 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.

22. The possession of the subject unit has already been offered to the complainants after obtaining occupation certificate on 11.07.2019. Therefore, the respondent/promoter is directed to get the conveyance deed of the allotted unit executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

H. Directions of the authority

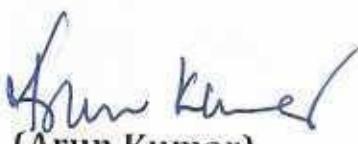
24. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.80% per annum for every month of delay from due date of possession i.e., 12.03.2017 till offer of possession plus two months or actual handing over of possession, whichever is earlier, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.
- ii. The respondent is directed to get the conveyance deed of the allotted unit executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, if not already paid, within a period of three months.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement dated 12.09.2013.

- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- v. A period of 90 days is given to the respondent/promoter to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.01.2026