

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

Complaint no.: **2987 of 2025 & Ors.**
 Date of decision: **11.11.2025**

NAME OF THE BUILDER		Ambience Projects & Infrastructure Private Limited	
PROJECT NAME		"Ambience Creacions"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2987/2025	Dipika Ashwani Sharma Vs Ambience Projects & Infrastructure Private Limited	Shri Sukhbir Yadav, Advocate And Shri Arjun Bhatnagar, Advocate
2.	CR/2985/2025	Dipika Ashwani Sharma Vs Ambience Projects & Infrastructure Private Limited	Shri Sukhbir Yadav, Advocate And Shri Arjun Bhatnagar, Advocate

CORAM:

Shri Ashok Sangwan
 Shri P S Saini

Member
Member

ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Ambience Creacions**" being developed by the same respondent/promoter i.e., M/s Ambience Projects & Infrastructure Private Limited. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking delay possession along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<i>Project Name and Location</i>	<i>"Ambience Creacions", Sector 22, Gurugram, Haryana.</i>			
<i>"Clause 7 POSSESSION OF THE UNIT:</i>				
<i>7.1 Schedule for possession of the said unit-</i> <i>The Company assures to handover possession of the Unit alongwith parking (if applicable) as per agreed terms and conditions on or before 31.12.2022."</i>				
<i>OC: 22.12.2023</i>				
Sr. No.	Complaint No.	CR/2987/2025		
1.	Allotment letter	25.05.2022 [pg. 44 of complaint]		
2.	Date of BBA	25.05.2022 [pg. 47 of complaint]		

3.	Unit no. and area	E-202, Floor-2 nd , Tower-E 1352.07 sq. ft. [carpet Area] [pg. 51 of complaint]	E-201, Floor-2 nd , Tower-E 1352.07 sq.ft. [carpet Area] [pg. 51 of complaint]
4.	Total sale consideration	Rs.3,72,62,610/- [pg. 52 of complaint]	Rs.3,72,62,610/- [pg. 52 of complaint]
5.	Amount paid	Rs. 3,73,05,329/-	Rs. 3,73,05,329/-
6.	Due Date of possession	31.12.2022	31.12.2022
7.	Offer of possession	17.01.2024 [pg. 17 of reply]	18.01.2024 [pg. 18 of reply]
8.	Show Cause notice for final opportunity for payment	14.05.2025 [pg. 92 of reply]	14.05.2025 [pg. 93 of reply]
9.	Cancellation letter	01.07.2025 [pg. 93 of reply]	01.07.2025 [pg. 94 of reply]

4. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/2987/2025 Dipika Ashwani Sharma Vs Ambience Projects & Infrastructure Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Unit and Project related details:

6. The particulars of the project, the details of 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:

Sr. No.	Particulars	Details
1.	Name of the project	Ambience Creacions"
2.	Location of the project	Sector-22, Gurugram
3.	Nature of the project	Residential Group Housing
4.	DTCP license no.	License no. 48 of 2012 Dated-12.05.2012
5.	Registered/not registered	Registered Vide registration no. 318 of 2017 dated-17.10.2017
6.	Allotment letter	25.05.2022 (As on page no. 44 of complaint)
7.	Unit no.	E-202, Floor-2 nd , Tower-E (As on page no. 51 of complaint)
8.	Unit Area	1352.07 sq. ft. [carpet Area] (As on page no. 51 of complaint)
9.	Builder Buyer's Agreement	25.05.2022 (As on page no.47 of complaint)
10.	Possession clause	Clause 7 POSSESSION OF THE UNIT: 7.1 Schedule for possession of the said unit- The Company assures to handover possession of the Unit alongwith parking (if applicable) as

		<i>per agreed terms and conditions on or before 31.12.2022.</i>
11.	Due date of possession	31.12.2022
12.	Sale consideration	Rs.3,72,62,610/- (As on page no. 52 of complaint)
13.	Total amount paid by the complainant	Rs. 3,73,05,329/-
14.	Occupation certificate	22.12.2023 (As on page no. 87 of reply)
15.	Offer of possession	17.01.2024 (As on page no. 17 of reply)
16.	Show Cause notice for final opportunity for payment	14.05.2025 (As on page no. 92 of reply)
17.	Cancellation letter	01.07.2025 (As on page no. 93 of reply)

B. Facts of the complaint:-

7. The complainants have made the following submissions: -

- That in the month of March 2022, complainant, received a marketing call from the office of the respondent, who represented himself as the Sales Manager of the respondent and marketed a residential project, namely "Ambience Creacions" situated at Sector-22, Gurugram. The Marketing staff of builder assured the complainant that construction of the project is near to completion and possession of the flat will be handed over before the end of the year 2022.
- That believing on the representation and assurances of the respondent, the complainant on 30.03.2022 booked an apartment bearing no. E-202 on 2nd floor in block 'E' in the project "Ambience Creacions" situated at Ambience Residential Apartments Complex, Sector-22, Gurugram. Thereafter, on 25.05.2022, an allotment

letter was issued by the respondent in favour of the complainant thereby allotting the flat to the complainant. The total sale consideration of the flat mentioned in the allotment letter was Rs.3,54,88,200/-.

- c. That on 25.05.2022, a pre-printed, unilateral, arbitrary builder buyer's agreement was executed inter-se the respondent and the complainant. As per clause 1.2 and annexure-2 of the BBA, the total sale consideration for the said flat is **Rs 3,72,62,610/-** out of which Rs 35,00,000/- had already been paid by the complainant at the time of booking. That the due date of possession was 31.12.2022 as per clause 7.1 of the agreement.
- d. That as per clause "I" of the said BBA, the carpet area of the flat is mentioned as 1352.07 sq. ft. and balcony area is mentioned as 279.54 which, if added becomes 1631.61 sq. ft. However, the super area is mentioned as 3976 sq. ft. which is 2.43 times of the carpet area plus balcony. This unusual difference between the carpet area and super area raises suspicion about the intention of the respondent. The complainant visited the site of the project and noted the fact that the common area is not so huge that it will amount to 2.43 times the total carpet area including balcony.
- e. That after few months of execution of the BBA, the complainant again visited the project site and it was shockingly revealed that the construction of the project was not as per the assurances given by the respondent and it was not going to be completed by due date of possession in any circumstance. Thereafter, the complainant apprised the respondent about her apprehensions regarding non-completion of the project by the due date of possession. However,

instead of making efforts for timely completion of the project, the respondent raised demands for balance sale consideration. These demands were objected by the complainant as the status of the construction was way behind its schedule and there were serious apprehensions in the mind of the complainant regarding completion of the project in time, which were later proved to be true.

- f. That the complainant was willing to pay the remaining sale consideration, and she repeatedly requested the respondent to hand over the physical possession of the unit, as the stipulated deadline had lapsed. Regrettably, the respondent failed to provide any meaningful updates or communication regarding the possession of the unit, leaving the complainant in a state of uncertainty.
- g. That on 16.11.2024, the respondent sent a demand-cum-offer of possession letter stating that it was in a position to hand over the vacant physical possession of the unit.
- h. A demand of Rs 1,38,05,329/- was also raised in the offer of possession towards total sale consideration of the unit. However, when the complainant visited the project site in order to ascertain the habitability of the unit, it was surprisingly revealed that the construction work was still going on and the unit of the complainant was not ready for taking possession. The complainant raised her protest and asked the respondent company to complete the construction and thereafter give a valid offer of possession. Moreover, the demand letter does not mention the delay compensation which the respondent was obligated to pay the

complainant on account of delay in handing over of possession. The offer of possession is not a valid offer of possession and does not align with the law. Thus offer of possession dated 19.11.2024 is null and void, being legally invalid as the unit was not in habitable condition and demand raised was illegal.

- i. That on 12.02.2025, a demand of Rs 1,38,05,329/- to the complainant. That even after more than 02 years from the due date of possession, the unit of the complainant was not in habitable condition. However, in good faith, the complainant paid the demand in two instalments, i.e., Rs 48,05,329/- on 20.03.2025 and Rs 90,00,000/- on 29.03.2025. Till 29.03.2025, the complainant has paid a total sum of **Rs 3,73,05,329/-**, which amounts to more than 100% of the total sale consideration as per BBA.
- j. That despite having paid more than 100% of the total consideration, the respondent did not hand over physical possession to complainant and rather issued a Show Cause Notice on 14.05.2025 to the complainant thereby giving a final opportunity to make the payment of Rs 26,93,150/- within 15 days from the issue of said notice or to show cause as to why the provisional allotment of the complainant be not cancelled after forfeiting the earnest money. Thereafter, the complainant sent a reply to the said notice on 27.05.2025 stating that she has paid more than 100% of the sale consideration and she is not liable to pay the said amount of Rs.26,93,150/- as the project was delayed inordinately by the respondent.
- k. That the respondent is vigil enough to charge interest on delayed payments from the complainant but at the same time the

respondent is silent on its obligation to pay "delay possession interest" to the complainant on account of delay in handing over of possession as per said clause 7.6 of the BBA. The complainant is entitled for delay possession charges on the mount paid by the complainant from the due date of possession i.e. 31.12.2022 till a valid offer of possession or physical handover of the complainant's unit.

- l. That thereafter the complainant again visited the office of the respondent and raised her protest over not handing over of possession and the said show cause notice. The staff of the respondent did not give any satisfactory reply to the genuine queries of the complainant, rather the complainant was told to compulsorily pay the club membership charges in addition to the said illegal demand of Rs 26,93,150/-.
- m. That despite the complainant having paid more than **100%** of the total sale consideration of the unit and being ready and willing to pay the legitimate demand (if any), the respondent has failed to give possession of unit in habitable condition. The complainant is willing to settle legitimate dues and take physical possession of her unit after adjustment of the delayed possession interest. There is a deficiency of service on the part of the respondent and as such, they are liable to be punished and compensate the complainant,
- n. That due to the acts of the above, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

- o. That the cause of action for the present complaint first arose on 31.12.2022 when the respondent failed to handover possession of complainant's unit as per the terms of BBA. Thereafter the cause of action arose on 19.11.2024 when the respondent sent an offer of possession loaded with unreasonable demands. Further, the cause of action again arose on 14.05.2025 when the respondent raised unreasonable and illegal demands vide a "Show Cause Notice" and threatened to cancel the allotment of the complainant. The cause of action is alive and continuing and will continue to subsist till such time as this Authority restrains the respondent by an order of injunction and/or passes the necessary orders.
- p. That the complainant does not want to withdraw from the project. The promoter has not fulfilled its obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.
- q. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to the Adjudicating Officer for compensation.

C. Relief sought by the complainants:

8. The complainants have sought following relief:
 - a. To set aside the alleged offer of possession dated 16.11.2024, since the offer of possession has been issued without adjustment of the delayed possession interest and the unit was not habitable.
 - b. To direct the respondent to issue a fresh offer of possession.
 - c. To set aside the "Show Cause Notice" dated 14.05.2025, as the complainant has paid more than 100% of the total sale consideration.

- d. To direct the respondent party to hand over physical possession of the unit in habitable condition, along with all amenities, including 02 car parking as per the terms and conditions of the BBA.
- e. To direct the respondent to pay delay possession charges from the due date of possession, i.e., 31.12.2022, till a valid offer of possession or physical handover of the unit.
- f. To direct the respondent to execute the conveyance deed.
- g. To direct the respondent to provide the calculation of the super area on actual measurement and as per the building plan.
- h. To refrain the respondent from charging club membership charges, as the same are optional and not mandatory as per BBA.
- i. To refrain the respondent from charging maintenance charges till handover of the unit or valid offer of possession.
- j. To refrain the respondent from charging holding charges.
- k. To refrain the respondent from charging interest on the delayed payments more than as prescribed in Rule 15 of The Real Estate (Regulation and Development) Rules, 2017.

D. Reply filed by the respondent no.1:

- 9. The respondent has contested the complaint on the following grounds:
 - a. That the complainant has *inter alia* alleged that the promoter has delayed the handing over of the unit and have accordingly, sought directions for payment of interest/charges for the period up to handing over of physical possession. In addition, the complainant has also sought directions for respondent to set aside "show cause notice" and issue fresh offer of possession and refrain from charging club membership charges. However, the

complainant has not placed complete facts before the Authority and have suppressed vital record.

- b. That the respondent has not in any manner contravened with the provisions of RERA Act, as alleged or otherwise and on this ground alone the present complaint deserves to be dismissed. It is, in fact, failure of the complainant to take possession. The respondent has duly offered possession of the unit to the complainant. However, the complainant has failed to take possession and has also not paid the interest on delayed payment, applicable holding charges and other dues.
- c. That the in view of the default in making due payments, the respondent after due process and after giving due opportunity to the complainant, cancelled the allotment vide letter dated 01.07.2025. Hence the present complaint is not maintainable as there is no relationship of allottee and builder surviving. The complainant has filed the complaint by suppressing crucial information which is an abuse to the process of law and is an attempt to mislead this Authority.
- d. That the complainant applied for allotment of a flat in the respondent's project. Various documents were submitted/ executed by the complainant in compliance of the requirement of allotment of a flat including apartment buyer's agreement dated 25.05.2022. The apartment No. E-202, Block - E, 2nd Floor, Ambience Creations, Sector 22, Gurugram was allotted to the complainant. The agreed cost of the unit was Rs.3,72,62,610/- (including GST and TDS) and interest free non-refundable security deposit (IFMSD) amounting to Rs.3,97,600/- inclusive of

GST. The said cost was to be paid in tranches. Under the schedule payment plan as captured in BBA, the complainants needed to pay a booking amount of Rs.33,65,385/- (exclusive of GST) being 10% of the basic cost of unit as the first tranche payment. Admittedly, the payment of the first tranche was paid by 31.03.2022.

- e. That the allottee was required to pay Rs.2,40,38,462/- more in addition to 10% within 3 months of booking i.e. by 30.06.2022. Subsequently the respondent issued a demand of Rs.2,50,00,001/- vide letter dated 25.07.2022. However, the allottee made payments of second tranche in parts of sum of Rs.40,00,000/- on 06.02.2023 & Rs.1,60,00,000/- on 16.02.2023 thereby deposited the amount after a delay of 8 months. It is pertinent to mention here that the allottee defaulted in making full payment and Rs.50,00,000/- was still pending from the second tranche.
- f. That it was agreed between the parties that upon the offer of possession, the complainant was obligated to pay the due amount i.e. Rs.1,38,05,329/- . However, the respondent after receipt of occupation certificate issued offer of possession vide letter dated 17.01.2024 demanding Rs.1,03,53,997/- i.e. (75% of due amount). Despite this no payment was received. Subsequently, this letter was followed by another letter dated 19.11.2024 and reminder letter dated 12.02.2025 for payment of 100% of the balance amount of Rs.1,38,05,329/- and after receipt of various reminder/demand letters, the complainant made part payment of Rs.48,05,329/- on 03.03.2025 & another

part payment of Rs.90,00,000/- on 29.03.2025 by with delay of more than 13 Months, further deviating from the agreed payment schedule.

- g. That it was specifically agreed between the parties that the balance cost of the unit shall be deposited by the complainant as per the payment plan as may be demanded by the respondent within the time and manner specified therein. It was also agreed between the parties that the physical possession of the unit will be delivered to the complainant only upon complete payment of the total cost (together with interest for delayed payment) of the unit on submission of relevant documents.
- h. That in terms of BBA, the possession was tentatively agreed to be delivered to the complainants on or before 31.03.2022 subject to the receipt of the entire payment of the sale consideration and other charges as stated above. That if any delay occasioned by Promoter due to *force majeure* events affecting the development /construction of the project shall be exempted and that the promoter shall be entitled to the extension of the time for offering possession of the unit.
- i. That the project development during the crucial period between the years 2020 and 2022 were severely hampered on account of COVID -19 related restrictions and lockdowns, which amounts to *force majeure* events and the Promoter was entitled to an extension of time for offering possession in terms of the BBA. Due to pollution conditions, State Government stopped construction activities on various occasions, which caused delay in completion of project in time.

- j. On account of the force majeure events during the period 2020 and 2022, the promoter time and again approached the HRERA Authorities seeking extension of the project deadline/registration certificate. Accordingly, the HRERA taking note of the COVID-19 / force majeure events, and other related concerns of the promoter, extended the timelines for project completion from time to time between 2020 and 2023.
- k. Despite the delay caused by the *force majeure* events, which were beyond the control of promoter, promoter completed the development and construction of the project as per the agreed sanction plans and applied for Occupation Certificate on 05.09.2022 and received the Occupation Certificate from the Directorate of Town and Country Planning of Haryana in respect to the project on **22.12.2023**.
- l. That in terms of the BBA, after receiving the Occupation Certificate as above, the promoter offered possession of the unit to the complainant by letter dated 17.01.2024. By the said letter, the promoter formally issued its "offer of possession" of the unit and also communicated the particulars of the payments due from the complainant to be paid to the promoter for receiving physical possession of the unit.
- m. That as per clause 10 of allotment letter dated 25.05.2022, it was expressly agreed by the complainant that club membership charges shall be payable at the time of possession, at the applicable rates. The said clause forms an integral part of the contractual terms accepted by the complainant at the time of booking of unit. Furthermore, in order to maintain uniformity

and parity across the residential project, all allottees have been uniformly requested to obtain club membership, and without exception, all other allottees have accordingly taken the same. In line with this standard practice and the agreed terms. The complainant was also requested to pay club membership charges. The said amount duly justified, contractual, and binding upon the complainant, and is to be paid prior to or the time of physical possession of the unit.

- n. The Complainant has not been affected by the alleged delay as the payment was linked to offer of possession. The possession was offered vide letter dated 17.01.2024 against payment of all dues, completion of formalities but the allottee failed to pay interest for delayed payment and other charges and did not file any document required for taking possession of flat. The complainant is required to pay a sum of Rs.26,93,150/- being interest on delayed payment inclusive of GST as demanded vide show cause letter dated 14.05.2025. The promoter/respondent issued a show cause notice dated 14.05.2025 in good faith to the complainant giving final opportunity for payment of outstanding amount. However, the complainant again defaulted on the same. Subsequent to this the promoter issued a cancellation letter dated 01.07.2025. Therefore, the respondent/company is entitled to forfeit the EMD money, interest payable on defaulted amount, penalty towards non-completion of formalities etc. for breach of agreement and non-payment of dues. The allottee shall collect the balance refundable amount after the aforesaid

deductions as per terms of BBA from the office of the promoter/respondent.

- o. The complaint lacks *bonafides* and deserves to be dismissed. That, the allotment has already been cancelled vide letter dated 01.07.2025 and therefore there is no surviving relationship between 'allottee' and 'builder'. The complaint is liable to be dismissed on this ground alone.
- p. That the complainant was fully aware that upon the promoter providing offer of possession, the complainant was required to remit the balance due payments and others charges including holding charges and interest for delayed payment.
- q. That the possession was tentatively agreed to be delivered to the complainants on or before 31.03.2022 subject to the receipt of the entire payment of the sale consideration and other charges. Any delay occasioned by promoter due to *force majeure* events affecting the development / construction of the Project shall be exempted and that the promoter shall be entitled to the extension of the time for offering possession of the unit.
- r. That there is no delay, no relief can be granted for alleged delayed completion and alleged delayed possession. Moreover, no prejudice is caused to the complainant as the payment was linked to offer of possession.

10. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

12. 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

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

"Section 11(4)(a)

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

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

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

F. Findings regarding relief sought by the complainants.

F.I. To set aside the alleged offer of possession dated 16.11.2024, since the offer of possession has been issued without adjustment of the delayed possession interest and the unit was not habitable.

F.II. To direct the respondent to issue a fresh offer of possession.

F.III. To direct the respondent to hand over physical possession of the unit in habitable condition, along with all amenities, including 02 car parking as per the terms and conditions of the BBA.

F.IV. To direct the respondent to pay delay possession charges from the due date of possession, i.e., 31.12.2022, till a valid offer of possession or physical handover of the unit.

F.V. To refrain the respondent from charging interest on the delayed payments more than as prescribed in Rule 15 of The Real Estate (Regulation and Development) Rules, 2017.

F.VI. To set aside the "Show Cause Notice" dated 14.05.2025, as the complainant has paid more than 100% of the total sale consideration.

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

16. In the present matter the complainant purchased a unit bearing no. E-202, admeasuring 1352.07 sq. ft. in the project Ambience Creations, Sector 22, Gurugram. The complainant paid an amount of ₹53,22,970/- against the total sale consideration of ₹3,73,05,329/-. An agreement was executed between the complainant and the respondent on 25.02.2022 and according to clause 7.1 of the agreement the respondent was obligated to complete the construction of the project and hand over the possession of the subject unit on or before 31.12.2022. The Occupation Certificate for

the project was obtained on 22.12.2023 from the competent Authority.

17. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

(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"

18. Clause 7 of the agreement for sale is reproduced below:-

7.1 Schedule for possession of the said unit-

*.....The Company assures to handover possession of the Unit alongwith parking (if applicable) as per agreed terms and conditions on or before ***31.12.2022.....****

(Emphasis supplied)

19. **Due date of possession and admissibility of grace period:** The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. The agreement was executed between the parties on 25.05.2022 and as per terms and conditions of said agreement the due date of handing over of possession comes out to be 31.12.2022. The events such as various orders by NGT in view of weather condition of Delhi NCR region, were for shorter duration of time. Further, the grace period on account of Covid-19 is not allowed as the agreement was executed between the parties after the outbreak of Covid-19. The Authority has allowed six-month covid relaxation from 01.03.2020 to 01.09.2020 only but the above agreement is executed much after above covid relaxation period and hence no benefits of same can be extended to the respondent. As per

clause 7.1 of the agreement, the possession of the allotted unit was to be offered on or before 31.12.2022. Hence, the due date of possession comes out to be 31.12.2022. The Occupation Certificate for the project was obtained on 22.12.2023 from the competent Authority.

20. 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."

21. 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;"

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., 11.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
23. **Rate of interest to be paid by complainant-allottee for delay in making payments:** 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.
24. 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.
25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 7.1 of the agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.12.2022. However, date Occupation Certificate has been received by respondent on

22.12.2023 and possession has been offered to the allottee on 17.01.2024. The Authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the agreement executed between the parties. 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.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.85% p.a. w.e.f. 31.12.2022 till date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority 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.

F.VII. To direct the respondent to execute Conveyance Deed.

27. The Authority observes that the conveyance has been subjected to all kinds of terms and conditions of agreement and the complainants not being in default under any provisions of agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:-

"Section 17: - Transfer of title

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

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

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

28. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondent is directed to execute the conveyance deed within one months after obtaining Occupation certificate from the competent Authority.

F.VIII To direct the respondent to provide the calculation of the super area on actual measurement and as per the building plan.

29. The Authority is of the opinion that the allottees have a right to know as to how much the carpet area of the unit is and how much loading has been done on it along with components of super area as per the builder buyer's agreement. Accordingly, the respondent promoter is directed to make available the details of the super area in terms of Section 11(3), 11(4)(b) & (f) read with Section 17 of the Act, 2016.

F.IX To refrain the respondent from charging club membership charges, as the same are optional and not mandatory as per BBA.

30. The Authority observes that as per clause 1.2(v)a of the builder buyer agreement dated 25.05.2022, it has been agreed as under:-

"1.2(v) The Allottee(s) has understood and agreed that in addition of the Total Price, following other charges and deposits shall be payable by the Allottee(s)

(a) Club Membership Charges, if the Allottee(s) opts for the facility and takes membership of the Club at the time of Application for club membership.

(b) Annual/Monthly/Quarterly Club Uses Charges in advance as may be decided by the Company or Maintenance Agency from time to time."

31. In view of the above, respondent is directed not to charge club membership charges in case the allottee does not wish to opt for club membership.

F.X Order the respondent to refrain from charging maintenance charges till handover of the unit or valid offer of possession.

32. The Act mandates under section 11(4)(d), that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

33. The respondent has obtained occupancy certificate of the tower in which the units of the complainant are located on 22.12.2023. Thereafter, the respondent is mandated to provide essential services and maintain the building in terms of section 11(4)(d) of the Act, 2016. In view of the above, the complainant is obligated to pay the maintenance charges from the date of offer of possession i.e. 17.01.2024.

F.XI. To refrain the respondent from charging holding charges.

34. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee. Therefore, it can be inferred that holding charges is something which an allottee

has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

35. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the *Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020*. The relevant part of same is reiterated as under-

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

36. Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainant.

G. Directions of the Authority

37. Hence, the authority hereby passes this order and issue 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):

- a. Cancellation is set aside. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 31.12.2022 till the date of valid offer of possession i.e. 17.01.2024 plus 2 months i.e. 17.03.2024 after obtaining occupation certificate from the competent Authority 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.
- b. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainant is directed to pay outstanding dues, if any, within 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of agreement within next 30 days and if no dues remain outstanding, the possession shall be handed over within four weeks from the date of this order.
- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- d. The respondent is directed to executed conveyance deed of the allotted unit after obtaining Occupation Certificate in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable. 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.

- e. The complainant shall pay the maintenance charges from the date of offer of possession.
- f. The respondent is directed not to levy any holding charges upon the complainant.
- g. The respondent is directed not to charge club membership charges in case the allottee does not wish to opt for club membership.
- h. The respondent shall not charge anything from the complainant which is not the part of the agreement.
- i. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

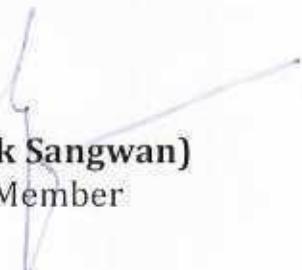
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

39. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.

40. File be consigned to registry.



(P S Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.11.2025