

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

Complaint no.: 3022 of 2024 & Ors.
Date of decision: 04.11.2025

NAME OF THE BUILDER		Ansal Housing & Construction Limited	
PROJECT NAME		"Ansal Estella"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3022/2024	Kusum Lata Sharma Vs Ansal Housing Limited & Ish Kripa Properties Private Limited	Shri Harshvardhan, Advocate And Shri Amardeep Kadian, Advocate for R-1 None for R-2
2.	CR/3023/2024	Kusum Lata Sharma Vs Ansal Housing Limited & Ish Kripa Properties Private Limited	Shri Harshvardhan, Advocate And Shri Amardeep Kadian, Advocate for R-1 None for R-2
3.	CR/3024/2024	Kusum Lata Sharma Vs Ansal Housing Limited & Ish Kripa Properties Private Limited	Shri Harshvardhan, Advocate And Shri Amardeep Kadian, Advocate for R-1 None for R-2
4.	CR/3025/2024	Kusum Lata Sharma Vs Ansal Housing Limited & Ish Kripa Properties Private Limited	Shri Harshvardhan, Advocate And Shri Amardeep Kadian, Advocate for R-1 None for R-2

CORAM:

Shri Ashok Sangwan
Shri P S Saini

Member
Member

ORDER

1. This order shall dispose of all the 4 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, "**Ansal Estella**" being developed by the same respondent/promoter i.e., M/s Ansal Housing 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:

Project Name and Location	"Estella", Sector 103, Gurugram, Haryana.
<p>30.</p> <p><i>"The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject</i></p>	

*to force majeure circumstances as described in clause 31. Further, there shall **be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.***

OC: Not Obtained

Offer: Not Offered

Comp. No.	Date of BBA	Unit no. and area	Total sale consideration and amount paid	Due Date of possession
CR/3022 /2024	20.03.2013 [pg. 33 of complaint]	P-0302 2600 sq. ft. [at page 37 of complaint]	TC ₹46,80,000/- [at page no. 37 of complaint] AP ₹53,22,970/- [page no. 10 of complaint]	20.09.2016 [at page 44 of complaint] Note: A grace period of 6 months is allowed being unqualified.
CR/3023 /2024	20.03.2013 3 [pg. 33 of complaint]	L-0301 1945 sq. ft. [at page 39 of complaint]	TC ₹35,01,000/- [at page no. 39 of complaint] AP ₹40,92,343/- [page no. of 17 of complaint]	20.09.2016 [at page 46 of complaint] Note: A grace period of 6 months is allowed being unqualified.
CR/3024 /2024	29.03.2013 3 [pg. 35 of complaint]	L-0204 1945 sq. ft. [at page 37 of complaint]	TC ₹35,01,000/- [at page no. 37 of complaint] AP ₹40,92,343/- [at page no. 19 of complaint]	29.09.2016 [at page 44 of complaint] Note: A grace period of 6 months is allowed being unqualified.
CR/3025 /2024	29.03.2013 3 [pg. 34 of complaint]	L-0304 1945 sq. ft. 683.83 sq. ft.	TC ₹35,01,000/- [at page no. 38 of complaint] AP ₹40,92,343/-	29.09.2016 [at page 45 of complaint]

		[at page 38 of complaint]	[at page no. 20 of complaint]	Note: A grace period of 6 months is allowed being unqualified.
<p><i>Note: In the table referred above certain abbreviations have been used.</i></p> <p><i>They are elaborated as follows:</i></p> <p><i>TC: Total consideration</i></p> <p><i>AP: Amount paid by the allottee(s)</i></p>				

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/3022/2024 Kusum Lata Sharma Vs Ansal Housing Limited & Ish Kripa Properties Private*** 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	"Estella", Sector 103, Gurugram.

2.	Total area of the project	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	17 of 2011 dated 08.03.2011 valid up to 07.03.2015
5.	Name of licensee	Rattan Singh and 9 others
6.	Registered/not registered	Extension granted vide no.- 09 of 2019, dated:25.11.2019 Valid till:17.08.2020 (Validity of registration has expired)
7.	Unit no.	P-0302 [pg. 37 of complaint]
8.	Area of the unit	2600 sq. ft. [pg. 37 of complaint]
9.	Date of BBA (signed by R1 & R2)	20.03.2013 [pg. 33 of complaint]
10.	Possession clause	<p>30.</p> <p><i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.</i></p> <p>(Emphasis supplied)</p> <p>[pg. 44 of complaint]</p>
11.	Due date of possession	20.09.2016

		(Note: 36 months from date of agreement i.e., 20.03.2013 as date of start of construction is not known + 6 months grace period allowed being unqualified)
12.	Sale consideration as per BBA.	₹ 46,80,000/- [at page 37 of complaint]
13.	Total amount paid by the complainant	₹ 53,22,970/- [at page 20 of complaint]
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained

B. Facts of the complaint:-

7. The complainants have made the following submissions: -
 - a. That the complaint is being filed by the complainant through her general power of attorney Sh. Dinesh Sharma who is nephew/near relative of the complainant and well conversant with the facts and circumstances of the present case and has been duly authorized vide GPA dated 11.06.2024 to institute the instant complaint, sign the complaint, pleadings, vakalatnama, affidavit, applications, to appear in the court, to engage counsel, give statements, compromise the matter and to do all other acts that may be necessary with respect to the present complaint on behalf of the complainant.
 - b. That the complainant along with his husband Late Rajesh Kumar Sharma booked the flat of size 3BHK + utility Room in April 2011 in the project by giving an initial booking amount of Rs.21,00,000/- on 01.04.2011 in favour of the respondent. After receiving the amount from the complainant along with his husband, the respondent

confirmed the booking of flat of the aforesaid size and also issued the payment receipt in favour of the complainant along with his husband and respondents assures that after few months it will allot the flat number and accordingly execute and sign the apartment buyer agreement.

- c. That after sometime respondent has issued demand letter dated 31.05.2011 and demanded an amount of Rs.18,46,573/- and also allotted the unit No. P-0302 in the project Sidhartha Ansal Estella Sector 103, Gurugram and in that demand letter the respondent also confirms the amount of Rs.21,00,000/- from the complainant and his husband.
- d. That the complainant along with his husband also paid an amount of Rs.9,00,000/- on 04.09.2012 which was duly confirmed by the respondent vide receipt No.517797 dated 04.09.2012 issued in favour of complainant and his husband.
- e. That after waiting allot the respondents executed and got signed the apartment buyer's agreement dated 20.03.2013 with the complainant and his husband with respect to unit for the total sale consideration of Rs.46,80,000/-. The complainant and his husband also paid an amount of Rs.23,22,970/- on the even date.
- f. That the complainants had paid Rs.53,22,970/- to the respondents till 20.03.2013 and accordingly the complainant and his husband had paid total sale consideration of the said property to the respondents.
- g. That after some time Mr. Rajesh Kumar Sharma died on 13.05.2016 and leaving behind his wife/complainant his only legal heir to

succeed the property after the death of Mr. Rajesh Kumar Sharma
Vide Will dated 27.12.1994.

- h. That the respondents assured the timely delivery of possession of the unit, which fell due way back on 20.03.2016, 36 months of the signing of the apartment buyers agreement, but the respondents never delivered the same on time and even till date the respondents has been miserably failed to handover the possession of the unit to the complainants despite there being inordinate delay of more than 9 years from the due date. The respondents even cannot count the grace period in the total period agreed for handing over the actual physical possession of the unit complete in all respects as the same can only be considered when the respondents are able to deliver the actual physical possession of the unit within the grace period, failing which the respondents are liable to pay the interest and penalty for this period also.
- i. That the complainant duly adhered their part of the contractual stipulations and the respondents with mala-fide intentions, even after taking the amount as per the prescribed payment schedule, never adhered to its contractual stipulation and liabilities causing huge financial losses to the complainant.
- j. That the complainant and many other people have invested their hard-earned money with hope of having their properties on time, which they could use for their personal use, but now they are left with nowhere to go except approaching this Authority.
- k. That the act of receiving the hard-earned money from the complainant and not making delivery of the unit after passing of more than 8 years from the due date of possession, wilfully and

knowingly amounts to an act of fraud and deliberate delay for which respondent is solely liable to pay damages also.

C. Relief sought by the complainants:

8. The complainants have sought following relief:
 - a. To direct the respondent to hand over the actual, physical and vacant possession of the said property i.e. Unit No. P-302, Sidharth Ansal Estella, 3 BHK + SQ apartments measuring 2600 sq. ft. complete in all respects along with all amenities as agreed to be provided by the respondent in terms of flat buyer agreement dated 20.03.2013. along with all ancillary facilities attached to it.
 - b. The respondent may kindly be directed to pay interest upon the total amount of Rs.53,22,970/- w.e.f. 19.03.2016 i.e. the due date for handing over possession of the said property till handing over the actual, physical and peaceful possession of the said property i.e. Unit No. P-302, Sidharth Ansal Estella, Sector 103, Gurugram 3 BHK + SQ apartments measuring 2600 sq. ft. complete in all respects along with all amenities.

D. Reply filed by the respondent no.1:

9. The respondent. has contested the complaint on the following grounds:
 - a. That the respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.
 - b. That the complainants had approached the respondent for booking a flat no. P-0302 in an upcoming project Estella, Sector 103, Gurugram. Upon the satisfaction of the complainant regarding inspection of the

site, title, location plans, etc. an agreement to sell dated 20.03.2013 was signed between the parties.

- c. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the respondent was in the year 2013. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. The Parliament would not make the operation of a statute retrospective in effect.
- d. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. The complainant cannot be allowed to take advantage of his own wrong.
- e. That complainant has admittedly filed the complaint in the year 2024 and the cause of action accrue in year 2017 as per the complaint itself. Therefore, the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- f. That the agreement which was signed in the year 2013 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. The clause 35 of the agreement provides for Rs. 5/ sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in Clause 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Authority in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.

- g. That the complaint itself discloses that the project does not have a RERA approval and is not registered. That if the said averment in the complaint is taken to be true, the Authority does not have the jurisdiction to decide the complaint.
- h. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging the foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.
- i. That the delay has been occasioned on account of things beyond the control of the answering Respondent. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. The complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

- j. That the respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. The clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
 - k. That the respondent has clearly provided in clause 35 the consequences that follow from delayed possession. The Complainant cannot alter the terms of the contract by preferring a complaint before the HRERA Gurugram.
10. That the respondent no. 2 filed application for dismissal of complaint and states that the format adopted by the complainant to file complaint is incorrect and inappropriate as it does not align with the prayer sought. That the complainant has requested possession of the unit along with interest but has utilized the format for CRA-II (for refund) and the complaint does not warrant a response and is liable to be dismissed. Despite giving opportunity to file reply on 02.01.2025, 27.03.2025 & 24.07.2025 the respondent no. 2 failed to file reply, hence the defence of respondent no. 2 was struck off by Authority on 12.08.2025.
11. 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

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

E.I Territorial jurisdiction

13. 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

14. 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;

Section 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."

15. 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 objections raised by the respondents**F.I Objections regarding force majeure.**

16. That respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 20.03.2013 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 20.03.2016. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than eight years and even some happening after due date of handing over of possession. However, the Authority observes that there is provision of 6 months grace period in lieu of force majeure conditions as per clause 30 of the agreement dated 20.03.2013 and the same is unqualified.
17. In view of the above, the Authority allows 6 months grace period on account of force majeure is being granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-promoter. Accordingly, the due date of possession comes out to be 20.09.2016.

F.II Objections regarding complaint being barred by the limitation.

18. The respondent no. 1 raised the contention that the complaint is barred by limitation.

19. In the present matter, the due date of possession was 20.09.2016 and till date the respondent no. 1 failed to obtain Occupation Certificate from the competent Authority. Consequently, the cause of action continued to subsist during the entire period. In light of these considerations, the Authority finds that the present complaint has been filed within a reasonable time frame and is therefore not barred by the statute of limitations.

F.III Objections regarding liability of respondent no. 2

20. While filing the complaint the complainant sought relief only against respondent no. 1. A perusal of various documents placed on the record shows that the agreement executed between complainant respondent no. 1 and respondent no. 2.
21. However, as per documents available on record the units of complainants are situated in Tower no. L & P and as per agreement executed among the parties all rights regarding the said towers vested in the Developer. The relevant para of the agreement dated 20.03.2013 is reproduced below for ready reference:-

*"B.The landowners had entered into an agreement with the Developer whereby the Landowners have assigned the complete right to develop, build and market sanctioned FSI area of 5,00,000 sq. ft. and the Developers in exercise of the rights so acquired are developing and marketing a part of the project and more specifically the built-up areas comprised in Towers K, L, M, N, O and P. The **balance area of the project is being developed, built and marketed by the Landowners themselves.** In view of the recitals as above, the Developer is sufficiently entitled to market and sell the apartments*

comprised in Towers K, L, M, N, O and P and has offered the Apartments for sale to general public."

(Emphasis supplied)

22. In view of the same, the Authority is of view that the respondent no.1 is solely liable to develop and complete the said units.

G. Findings regarding relief sought by the complainants.

G.I. To direct the respondent to hand over the actual, physical and vacant possession of the said property i.e. Unit No. P-302, Sidharth Ansal Estella, 3 BHK + SQ apartments measuring 2600 sq. ft. complete in all respects along with all amenities as agreed to be provided by the respondent in terms of flat buyer agreement dated 20.03.2013. along with all ancillary facilities attached to it.

G.II. To directed the respondent to pay interest upon the total amount of Rs.53,22,970/- w.e.f. 19.03.2016 i.e. the due date for handing over possession of the said property till handing over the actual, physical and peaceful possession of the said property i.e. Unit No. P-302, Sidharth Ansal Estella, Sector 103, Gurugram 3 BHK + SQ apartments measuring 2600 sq. ft. complete in all respects along with all amenities.

23. 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.
24. In the present matter the complainant purchased a unit bearing no. P-0302, admeasuring 2600 sq. ft. in the project Sidhartha Ansal Estella Sector 103, Gurugram. The complainant paid an amount of ₹53,22,970/- against the total sale consideration of ₹46,80,000/-. An agreement was executed between the complainant and the respondent on 20.03.2013 and according to clause 30 of the agreement the respondent was obligated to complete the construction of the project and hand over the possession of the subject unit within 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the

required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later. The occupation certificate for the project has not yet been obtained from the competent Authority.

25. 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"

26. Clause 30 of the agreement for sale is reproduced below:-

30. The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit"

(Emphasis supplied)

27. **Due date of possession and admissibility of grace period:** As per clause 30 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of within 36 months from the date of execution of Agreement or within 36 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. The period of 36

months is calculated from the date of buyer's agreement i.e., 20.03.2013 as the date of commencement of construction is not known. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 20.09.2016. The Occupation Certificate for the project has not yet been obtained from the competent Authority.

28. **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."

29. 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;"

30. 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., 04.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
31. **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.
32. 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.
33. 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 30 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 20.09.2016. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date. 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.

34. 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. 20.09.2016 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.

G.III. Execute Conveyance Deed

35. 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."*

36. 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.
37. That the complainant did not pursue any specific claim or remedy against respondent no. 2 in the present complaint, and the Authority did not *Suo moto* grant any relief.

H.Directions of the Authority

38. 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. The respondent no. 1 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., 20.09.2016 till the 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.
- b. The respondent no. 1 is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
- d. The respondent no. 1 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 respondent no. 1 shall not charge anything from the complainant which is not the part of the agreement.
- f. 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.

39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
41. File be consigned to registry.


(P S Saini)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.11.2025

