

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

Complaint no. : 3051 of 2025
Date of complaint : 30.06.2025
Date of first hearing: 25.09.2025
Date of order : 19.02.2026

Nidhi Aggarwal and Deepak Aggarwal
R/o: B-33, T/F, South Extension 1, South
Delhi- 110049

Complainants

Versus

Burman Estate Private Limited
(Formerly known as Burman GSC Estate
Private Limited)
Regd. Office at: - B-1/E-24, Mohan Co-
Operative Industrial Estate Pvt. Ltd., New
Delhi- 110044

Respondent

CORAM:
Phool Singh Saini

Member

APPEARANCE:
Sh. Harshit Batra (Advocate)
Shri Vinay Kumar Yadav (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant(s) /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 provision 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	"Gurgaon Spectrum Centre", Sector 82A, Gurugram, Haryana
2.	Project area	4.4375 Acre
3.	Nature of the project	Serviced Apartment
4	RERA Registered/ not registered	Registered
5	Serviced apartment no.	911, 9 th floor (page 33 of complaint)
6	Unit area admeasuring	663 sq. ft. (page 33 of complaint)
	Allotment Letter	05.11.2015 (page 26 of complaint)
7.	Date of execution of agreement to sell	15.12.2016 (page 32 of complaint)
8	Possession clause 13.4	<i>"13.4..... the developer proposes to offer the possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of this agreement. The allottee further agrees and understands that the developer shall additionally be entitled to a period of 180 days (Grace Period), after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the developer."</i>
9	Due date of possession	15.03.2021 (Calculated to be 45 months from the date of execution of agreement (15.09.2020) plus grace period of 180 days)
10	Basic sale consideration	Rs.56,85,225/- (page 40 of complaint)
	Total Sale Consideration	Rs.64,83,575/- (As pleaded by complainant at page 27 of complaint)
11	Amount paid by the complainant	Rs.67,41,589/- (As pleaded by complainant at page 20 of complaint)

12	Occupation certificate	19.11.2024 (page 52 of reply)
13	Offer of possession	Not on record
14.	Rental pool agreement	15.12.2016 (page 11 of reply to the application filed by the complainant)

B. Facts of the complaint

3. The complainants have made the following submissions: -
- a) That relying on the representations, warranties, and assurances of the respondent and its directors, officials etc. that the respondent is a reputed developer and that it has the requisite skills and resources to execute, implement, develop, construct and complete the project in a timely and orderly manner within the committed and agreed timelines and also to further pool the various units in the project for effective and efficient leasing thereof so as to benefit the respective allottees, The complainants booked a unit no. 911 on the 9th floor in serviced apartment block named as "The Spectrum" admeasuring 663 sq. ft. super area in the real estate development of the respondent, known under the name and style of "Gurgaon Spectrum Centre" at Sector 82A, Gurugram, Haryana ("project"). The said unit was jointly allotted to the allottees vide an allotment letter dated 05.11.2015, where it was maintained that the basic cost of the Unit will be Rs.56,85,225/- and total sale consideration of Rs.64,83,575/-.
 - b) That the respondent without even executing the builder buyer agreement had already demanded more than 10% of the total sale consideration of the said unit from the complainants which is a gross violation of Section 13(1) of the Act which explicitly states that no builder shall be allowed to accept a sum more than ten percent of the total sale consideration of the apartment, plot or building as the case may be. It is evident that the



- complainants, even before the execution of the agreement had paid a sum of Rs.17,76,378/- i.e., approximately 30% of the sale consideration of the unit, as per demands raised by the respondent from time to time.
- c) That the respondent, after the letter of allotment dated 05.11.2015 and after a substantial delay, sent a pre-printed builder buyer agreement, which the complainants were reluctant to sign, as the agreement contained many arbitrary and one-sided clauses to suit to the convenience of the respondent. However, the complainants after investing their hard-earned money and in apprehension of losing their already paid consideration against the total consideration, were coerced to sign the Agreement on dotted lines with no option and opportunity to negotiate the terms and conditions and thus, the complainants signed the builder buyer agreement on 15.12.2016.
- d) That the complainant, in order to fulfil their dream of owning their own home, availed a loan against the apartment in question, to make sure that they are able to avail timely benefits out of the same, ignorant of the fact that the respondent had manipulated and coerced them into signing a paper which would only cause them a series of problems. The original copy of builder buyer agreement dated 15.12.2016 has been handed over to the ICICI Bank for the loan availed against the apartment in question.
- e) That along with the execution of one-sided buyer's agreement, the respondent had also coerced the complainants into signing a one-sided and arbitrary rental pool agreement dated 15.12.2016 at the same time as signing the buyer's agreement dated 15.12.2016. The complainants did not have any option but to sign the same. The rental pool agreement does not contain any start date or any minimum commitment amount to be paid to the complainants, at which their unit shall be further leased out or operated by the Rental Pool Entity.

- f) That such action of the respondent clearly amounts to unfair trade practices, adopted by the respondent inasmuch as such unilateral and one-sided clauses favouring the builder are clearly arbitrary in the eyes of law and are covered under the definition of 'unfair trade practice'. The Hon'ble Supreme Court, in recent judgements like NBCC (India) vs Shri Ram Trivedi (2021) 5 SCC 273 and Experion Developers Pvt. Ltd. vs Sushma Ashok Shiroor 2022 SCC OnLine SC 416, has opined that when the terms and conditions are such that it benefits the builders only and the flat purchasers have no other option but to comply such clauses, then such clauses are not binding as the clauses providing for exclusion of certain periods for calculating completion date/due date of possession as well as delay compensation should be reasonable and not one-sided. Furthermore, the Court further held that the concerned authorities and fora are empowered to award statutory compensation as well as just and reasonable compensation and they are not constrained by the arbitrary clauses, or the arbitrary rates prescribed in such one-sided agreements.
- g) That after the booking and even at the time of execution of the agreement, the respondent made false representations and gave false assurances and commitments with respect to the project and the timely delivery of the said project to the complainant, knowing them to be false and incorrect and in fact, all of them proved to be false and incorrect. In-fact, from the very beginning, the respondent had a malafide intent and various assurances, and commitments were given on the false pretext and there was no intent to honour such commitments on part of the respondent.
- h) That the complainant's dream of owning the said unit and enjoying and reaping in, securing and deriving the benefits therefrom (both monetary and otherwise), as promised and contractually committed by the respondent, has been shattered by the respondent in a most unlawful and

illegal manner. It is anticipated that the project was launched, and bookings were accepted with the intention to cheat and harm the innocent buyers and dupe them as is the case of the respondent despite being part of the well-known business conglomerate and the respondent and its promoters and management had no intent to honour their commitments and all their promises and assurances turned to be false and untrue.

- i) That the complainants, trusting the words and promises of the respondent and its senior management, diligently kept on paying the demands raised from time to time by the respondent in the hope that the said payments from the hard-earned incomes of the complainant(s) are going towards the timely delivery of the said Unit. However, all the promises, assurances and undertakings of the respondent turned out to be false, misleading, and untrue. The complainants had already made a payment of Rs.67,41,589/- to the respondent, which in itself is an amount more than the total sale consideration as per the agreement between the parties, and thus, is a violation of the terms and conditions of the said agreement.
- j) That the relationship between the parties is contractual in nature and is governed by the builder-buyer agreement executed between the parties. The rights and obligations of the parties flow directly from the builder-buyer agreement according to which, the respondent was obligated to complete the construction and development of the said project and to deliver the possession of the said unit and further lease out the same within time as committed to the complainants and contractually undertaken in the agreement and even as otherwise declared and committed to the Authority for registration of the project as on on-going project under the Act. However, the respondent miserably failed to

comply with the said obligation which directly flowed from the Clause 13 subclause 13.4 of the Agreement despite being bound by the terms and conditions of the said agreement.

- k) That the respondent has gravely violated Sections 17 and 18 of the Act. The conduct of non-delivery of valid possession of the said unit by the respondent and non-execution of the conveyance deed within the stipulated time is the sheer default on part of the respondent.
- l) That the respondent cannot make any pre-condition for execution of the conveyance deed. The complainant has invested their hard-earned money into the said apartment with the sole hope of getting some fruitful outcomes out of the said project but the dreams of the complainants have been broken by the respondent by delaying the offering of possession of the complainants. Not only has the apartment been bought by the complainant with the hard-earned money, a loan amounting to Rs.32,78,996/- had also been availed by the complainant to make sure their dreams are not left hollow.
- m) That, furthermore, the respondent has failed in complying with all the obligations, not only with respect to the agreement with the complainants but also with respect to the applicable laws, rules, and regulations thereunder and more particularly under the RERA Act. It is pertinent to mention here that the RERA registration of the said project was valid till 30.06.2020, which stands expired as on date and has not been renewed till date thereby also leading to a violation of Section 4(2)(l)(c) and Section 6 of the Act. The project has been categorized as "Lapsed Project" under the rules and regulations framed under the Act. The respondent has hence violated Section 11 (4) (b) of the Act.
- n) That with the dream of owning a commercial space to enjoy and reap in the benefits therefrom including but not limited to as one of the sources

of income for the complainants from the project which was advertised to be a progressive and aesthetic property, has been crushed by the malafide and defaulting conduct of the respondent and the said dream instead has turned into a nightmare causing mental and financial agony to the complainants. The said Unit was booked by the complainants with a hope that they would be able to derive the benefits out of the same and the proceeds would be beneficial for them during times of need, but the respondent has made the complainant(s) run from corner-to-corner causing grave mental agony to the complainant(s).

- o) That the present case is a clear exploitation of innocence and beliefs of the complainants and shows the intent of the respondent to retain the complainant's hard-earned money illegally and enjoy the same, without delivering the said Unit and without further leasing out the same and to continue in breaching the agreed timelines and its obligations under the contract and otherwise under the law.
- p) That the respondent is a continued defaulter. The respondent has tried to cheat and dupe the innocent and gullible buyers by diverting the money collected from them for their own use or benefits. The respondent has not only faulted in offering and providing the timely possession of the apartment in question but has also charged the GST @18% from the complainant(s) which is more than the maximum which can be charged from the complainant(s) as per the rules and regulations laid down in regard to the same and the same is a clear violation of the relevant provisions of the law.
- q) That the act and conduct of respondent is contrary to the settled terms and conditions and the settled law. It is patent from the present facts that there has been grave default in the timely fulfilment of commitments by respondent, and the same has been acting contrary to the contractual

terms. The complainants strongly opines that the method chosen by the respondent in duping the complainants amounts to unfair trade practices for which the respondent is liable to be punished in accordance with the law.

- r) That now, being aggrieved by such actions and acts of omissions of the respondent and non-adherence of the respondent to their contractual commitments and obligations besides their obligations under the law, the inordinate delay in the delivery of the said unit, the complainants have approached the authority for effective remedy.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- I. Direct the respondent to pay the delayed possession charges to the complainants @ MCLR+2% from the due date of possession till the date of handing over of possession under section 18 of the Act.
- II. Direct the respondent to execute the conveyance deed under section 18 of the Act.
- III. Direct the respondent to refund the excess charges of GST collected from the complainants @18% instead of applicable rate of GST on the sale purchase of the under construction commercial units like service apartments.
- IV. Direct the respondent to issue a fresh statement of account after adjustment of the delayed possession charges.
- V. Direct the respondent not to charge any illegal charges, including holding charges or any charged not specifically agreed between the parties at the time of execution of the agreement dated 15.12.2016.
- VI. Directed the respondent to not charge the maintenance charges till the handing over of possession to the complainants.
- VII. Directed the respondent to disclose the LOI/Agreement executed between the rental pool entity and the operator.
- VIII. Directed the respondent to start the rentals as per the terms of the Agreement and the Rental Pool Agreement executed between the parties.



- IX. Direct the respondent to pass on the benefit of the rent benefit gained by the respondents to the complainants as per the terms of the Agreement and the Rental Pool Agreement executed between the parties.
- X. The Respondent be directed that any loss incurred by the respondent/Lemon Tree Hotels/any other hotel operator shall not be detriment of the complainants and the complainants under no circumstances be asked to make further payment of any cost/share in losses to the respondent/ Lemon Tree Hotels/any other hotel operator.
- XI. To initiate proceedings against the respondent for violating Section 4(2)(I)(c), and Section 6, punishable under Sections 60 and 61 of the Act.
- XII. To grant leave to the complainants to approach the Adjudicating Officer U/S 71 and 72 R/W Section 31 of the Act for various violations of the agreement, and the Act, as committed by the respondent.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds vide its reply dated 13.11.2025: -
- a) That the complainant made several visits to the office of the respondent to know about the details of the project titled as "**The Spectrum**", Sector -82A [hereinafter referred to as '**Project**'] located at Sector 82-A, Gurugram, Haryana. That the complainant enquired about the veracity of the project of respondent and had immense interest to invest in the project for profits/financial gains, as it is a **commercial project**. Therefore, the complainant came forward to invest in the project of respondent to extract speculative gains. That the complainant booked a unit by paying the requisite booking amount in the project of the respondent subject to the payment plan as accepted there under in the application form.



- b) That it is contended to note that the respondent being in a position of developer did not make any false promises or had not given fake assurances to the complainant. That all the terms and conditions were made crystal clear to the complainant at the time of booking and the application form therein and also at the time of execution of agreement to sell/Builder Buyers Agreement. That the complainant proceeded with the agreement to sell/builder buyers agreement will-fully agreeing to the same without any objections whatsoever.
- c) That the project was delayed due to the reasons that the Hon'ble National Green Tribunal(NGT) had passed orders governing the entry and exit of vehicles in NCR region and the Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for the last couple of years at the time of change in weather in November every year. The delay in completion of project is mainly on account of orders of the National Green Tribunal (NGT) for banning construction activities at project site. The said orders were passed by the NGT from time to time due to unforeseen rise in pollution and high risk in air quality index. It is pertinent to note that re-mobilization of resources and commencing works in full swing after lifting of the ban is a slow process and therefore the overall impact of the ban was much extensive as compared to the actual ban. The Contractor of respondent could not undertake construction for approximately 2-3 months every year, in compliance of the orders of Hon'ble National Green Tribunal. There were frequent disturbances and disruptions in completion of construction activity at the spot causing delays which were unforeseen and absolutely beyond the power and control of the respondent.



- d) Further the impact of lockdown to curb the spread of Novel Corona Virus (Covid 19) leading to a complete halt in all activities except essential services has led to substantial delays in re-mobilization of manpower followed by adherence of MHA guidelines that has led to loss of productivity in manpower outputs to complete the works at site. Though we have ensured fast tracking the activities by targeting the completion of parallel work front and procurement of sourced items at site, few critical path activities have been delayed on the account of compliance of MHA guidelines to control the spread of Covid-19 in 2020 followed by Omicron in the year 2021 and the same is unforeseen delay beyond the control of the developer. Due to spread of Covid-19 and Omicron the Hon'ble Apex Court have extended all Kinds of Limitations from 15th March 2020 till 28th Feb 2022.
- e) The developer/builder committed to handover timely possession and hence with facing the aforesaid difficulties the construction of the project has been completed in February 2023, the aforesaid fact of completion of work can be verified with the spot inspection. Promptly after completion of project, the developer/respondent had applied for the grant of occupation certificate but the same application has been returned in original by the DGTCP, by stating the reason that the company shall apply for change in name of company under the beneficial policy dated 18.02.2015 or after the decision of Hon'ble High Court in CWP No. 9586 of 2021 titled as Burman Estate Pvt. Ltd. Vs. State of Haryana. The respondent/developer was and still committed to give possession of the allotted unit within prescribed time but the unforeseen delay has been caused due to reasons stated above, which are beyond the power and control of the respondent/developer. The Occupation Certificate has been duly issued by the department of Town and Country Planning,

Chandigarh, Haryana vide Memo No. ZP-464-Vol.-II/PA(DK)/2024/34907 dated 19.11.2024.

- f) That the respondent/developer have already spent enormous amount of money towards the due construction and development of the project of which occupation certificate was already applied but had been returned due to reason stated above. The respondent has filed their reply against show cause notice dated 02.04.2021 to The Director, town and Country Planning, Department Haryana in pursuant to order dated 10.10.2023 passed by the Hon'ble Punjab and Haryana High Court, Chandigarh on which hearing has been conducted on dated 02.02.2024 and the order of DGTCP was awaited. Now the aforesaid matter has been decided and settled, all formalities has been completed and the occupation certificate has been duly issued by the department of Town and Country Planning, Chandigarh, Haryana vide Memo No. ZP-464-Vol.-II/PA(DK)/2024/34907 dated 19.11.2024 rather the complainant did not come forward to take possession of the unit allotted to him.
- g) That the respondent/developers spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) and have duly performed their obligations have been unable to realize the proceeds of the said project from the complainant and the legitimate dues of the respondent/developers for no just and valid cause have been withheld by the allottees. The complainant has violated several provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017 and are liable for the same. On account of such breaches, delays and defaults of the respondents it is the respondent/developers who are entitled to claim compensation from the allottees including complainant. That as per Section 38 of the RERA Act, 2016, this Hon'ble Authority has the power to impose penalty or interest in regard to any



- contravention of obligations casted upon the complainant under the RERA Act, 2016 or the Haryana RERA Rules, 2017 and the regulations.
- h) That the complainant intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement and to gain unlawful enrichment. That it is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of the intention of the complainant. The present complaint is devoid of merit and thus liable to be dismissed. That the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. The complainant be put to the strict proof of the same. It is humbly submitted that the complainant has not come this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.
- i) That the complainant is trying to shift his onus of failure on the respondent as it is the complainant who failed to comply his part of obligation and miserably failed to pay the instalments in time, which clearly shows the gross misconduct and malafide motive of the complainant who has pre-determined mala-fide motive to cause harassment and financial loss to the respondent by raising baseless and absurd allegations which are not maintainable in the eyes of law.
- j) That, it is evident that the entire case of the complainant is nothing but a web of lies and false and frivolous allegations made against the respondent and the same is an afterthought and a concocted story. That the various contentions and claims as raised by the complainant is fictitious, baseless, vague, and wrong and created to misrepresent and mislead this Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant is



sustainable before the Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

7. All other averments made in the complaint were denied in toto.
8. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. 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) 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."

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

F. Findings on the objections raised by the respondent.

F. I Objection regarding delay due to force majeure circumstances.

13. The respondent-promoter raised contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic. But all the pleas advanced in this regard are devoid of merit. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 10.11.2020. Further, quoting HARERA notification no. 9/3-2020 dated 26.05.2020, the respondent requested for an extension of 6 months in lieu of Covid-19. However, it is observed by the Authority that a respondent has already obtained a 6-month extension due to being "unqualified" as per clause 23 of the buyer agreement and is now seeking a second extension based on the COVID-19 pandemic which is unjustified double-benefit. Therefore, any extension in timeframe for handover of possession in lieu of Covid-19 cannot be granted and the due date for handover of possession remains unaltered i.e., 15.03.2021.

G. Findings on the relief sought by the complainant



G.I Direct the respondent to pay the delayed possession charges to the complainants @ MCLR+2% from the due date of possession till the date of handing over of possession under section 18 of the Act.

14. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to Section 18(1) of the Act which 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."*

15. Clause 13.4 of the buyer's agreement (in short, the agreement) provides the time period for handing over possession and the same is reproduced below:

"the developer proposes to offer the possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of this agreement. The allottee further agrees and understands that the developer shall additionally be entitled to a period of 180 days, after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the developer"

16. **Due date of handing over possession:** As per clause 13.4 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 45 months from the date of this agreement with a grace period 180 days after the expiry of the said commitment period for unforeseen delays beyond the reasonable control of the developer. Accordingly, the due date of possession comes out to be 15.03.2021 including grace period.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee(s) 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, *ibid*. 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]

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.

18. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all cases.
19. 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., 19.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
20. 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;"

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.
22. On consideration of the circumstances, the evidence and other records and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 15.03.2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. The occupation certificate has been received by the respondent on 19.11.2024 but no possession of the subject unit offered to the complainants till date. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 15.03.2021 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.
23. Further, as per Section 19(10) of Act of 2016, the allottees are under an obligation 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 19.11.2024. There is nothing on record which shows that respondent has offered possession to the complainant till date. So, it can be said that the



complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 15.03.2021 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.

24. 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 at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 15.03.2021 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.

G.II Direct the respondent to execute the conveyance deed under section 18 of the Act.

25. The complainants are seeking relief of execution of conveyance deed. A reference to the provisions of Section 17 (1) of the Act is also must and it 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."

[Emphasis supplied]

26. Therefore, as per Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant(s). Whereas as per section 19(11) of the Act of 2016, the allottee(s) are also obligated to participate towards registration of the conveyance deed of the unit in question.
27. In view of the above, the respondent is under obligation to execute the registered conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016, upon payment of requisite stamp duty/registration charges at applicable rates fixed by State Government, within a period of 90 days from the date of this order as the occupancy certificate has been already obtained by it from the competent authority.

G.III Direct the respondent to refund the excess charges of GST collected from the complainants @18% instead of applicable rate of GST on the sale purchase of the under construction commercial units like service apartments.

28. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit



was required to be delivered by 15.03.2021 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e. date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees **where the same was leviable**, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

G.IV Direct the respondent not to charge any illegal charges, including holding charges or any charged not specifically agreed between the parties at the time of execution of the agreement dated 10.02.2017.

G.V Directed the respondent to not charge the maintenance charges till the handing over of possession to the complainants

29. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020. Further, the complainants raised an objection towards the amount raised towards maintenance charges. This issue has already been dealt with by the Authority in complaint bearing no. **4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021**, wherein it was held that the respondent is right in demanding maintenance charges at the rates' prescribed in the buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

G.VI Direct the respondent to pass on the benefit of the rent benefit gained by the respondent to the complainants.



G.VII To direct the Respondent to start the rentals as per the terms of the Agreement and the Rental Pool Agreement executed between the parties

30. The complainants took a plea to pass on the benefits of the rent gained by the respondent to the complainants. As per Clause 7 read with Schedule 2 of the Rental Pool Agreement, the respondent is liable to distribute to the complainant the "Owner's Share" of the Total Distributable Cash Flows. As per Schedule 2 of the Rental Pool Agreement, the owner's share is calculated proportionately on the basis of the owner's apartment area vis-à-vis the total saleable area, multiplied by the total distributable cash flows. Further, clause 7.1 specifically provides that the rental pool entity shall transfer to the owner the owner's share for each half yearly period, subject only to the deductions expressly mentioned therein. Therefore, the respondent is directed to pass on the full benefit of rent accruing from the rental pool to the complainant strictly in accordance with the agreed formula mentioned in schedule 2 of the rental pool agreement and terms of the agreement, without withholding the distributable share except as contractually permissible.

G.VIII To initiate proceedings against the respondent for violating Section 4(2)(I)(c), and Section 6, punishable under Sections 60 and 61 of the Act

31. The complainants have stated that the registration of the project expired on 30.06.2020 and has not been renewed till date. In this regard, in CR/3020/2025 titled as "*Rajiv Agarwal and Punam Agarwal vs Burman GSC Estate Pvt. Ltd.*" the planning branch of the Authority has already been directed to take necessary actions against the respondent for not applying for extension of registration/ non submission of CC/OC.

G.IX To grant leave to the complainants to approach the Adjudicating Officer U/S 71 and 72 R/W Section 31 of the Act for various violations of the agreement, and the Act, as committed by the respondent

32. The complainants in the aforesaid relief is seeking relief w.r.t compensation. The Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech*

Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G.X To direct the respondent to issue a fresh statement of account after adjustment of the delayed possession charge,

33. The complainants took a plea to issue fresh statement of account after adjustment of delay possession charges. The respondent is hereby directed to issue a fresh and updated statement of account in respect of the subject unit, after duly calculating and adjusting the amount payable towards delayed possession charges.

G.XI To direct the Respondent to disclose the LOI/ Agreement executed between the rental pool entity and the operator; and/or

34. It is an admitted position that a buyer's agreement and a rental pool agreement have been duly executed between the parties, wherein all the terms and conditions governing the service apartment, including rights, obligations, revenue sharing, management, and operational modalities, have been clearly stipulated. In order to ensure complete transparency and to protect the contractual and financial interests of the complainant, the respondent is directed that if, apart from the said agreements, any other agreement, memorandum of understanding or any form of contractual understanding has been executed involving the complainant, the rental pool entity and/or the operator whether directly or indirectly affecting the complainant's rights, liabilities, revenue entitlement or the operation and



management of the unit the respondent shall disclose the same to the complainants.

G.XII. The Respondent be directed that any loss incurred by the Respondent/ Lemon Tree Hotels/ any other hotel operator shall not be detriment of the Complainants and the Complainants under no circumstances be asked to make further payment of any cost/ share in losses to the Respondent/Lemon Tree Hotels/ any other hotel operator.

35. The complainants took a plea that under no circumstances be asked to make further payment of any cost/ share in losses to the Respondent/Lemon Tree Hotels/ any other hotel operator. As per Clause 11, the Rental Pool Entity acts solely as an agent of the Serviced Apartment Owners while performing its duties under the agreement, which reproduced below as:

11.AGENCY RELATIONSHIP

In the performance of its duties hereunder, Rental Pool Entity shall act solely as the agent of the Serviced Apartment Owners. All debts and liabilities to third persons incurred by Rental Pool Entity with respect to the Rental Pool for the Serviced Apartment Business pursuant to this Agreement shall be the debts and liabilities of Serviced Apartment Owners only, and Rental Pool Entity shall not be liable for any such obligations by reason of its management, supervision, and direction of the day-to-day operations and management as appropriate and required to operate and manage the Serviced Apartment Business pursuant to this Agreement. Rental Pool Entity may so inform third parties of its relationship and may take any other reasonable steps to carry out the intent of this Clause.

36. It is clear from the above-mentioned clause, rental pool entity manages and operates the serviced apartment business on behalf of the owners, but it does not act as an independent principal. The clause clearly states that all debts and liabilities incurred toward third parties in relation to the rental pool business are the responsibility of the serviced apartment owners, not the rental pool entity. In other words, if any financial obligation arises from the operation of the serviced apartments, the liability legally rests with the owners. However, the rental pool entity is responsible for managing,

supervising, directing, and handling the day-to-day operations of the serviced apartment business as required under the agreement.

H. Directions of the authority

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

- I. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 15.03.2021 till the expiry of 2 months from the date of offer of possession plus 2 months, as per Proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
- III. The respondent is directed to execute the registered conveyance deed in favour of the complainant within 60 days from the date of this order
- IV. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. The rate of interest chargeable from the allottee 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 delayed possession charges as per Section 2(za) of the Act.
- VI. The respondent is directed that if, apart from the said agreements, any other agreement, memorandum of understanding or any form of

contractual understanding has been executed involving the complainant, the rental pool entity and/or the operator whether directly or indirectly affecting the complainant's rights, liabilities, revenue entitlement or the operation and management of the unit the respondent shall disclose the same to the complainants.

- VII. The respondent shall charge GST from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.
- VIII. The respondent is directed to pass on the full benefit of rent accruing from the rental pool to the complainant strictly in accordance with the agreed formula mentioned in schedule 2 of the rental pool agreement and terms of the agreement, without withholding the distributable share except as contractually permissible.
- IX. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- X. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
38. Complaint stand disposed of.
39. Files be consigned to registry.


(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.02.2026