

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

Complaint no.: 1604 of 2025
Date of filing: 19.03.2025
Date of first hearing: 07.08.2025
Order pronounced on: 12.02.2026

Jasmeet Bhardwaj

R/o: - House no. 45, 1st Floor, Pocket- A2,
Indraprastha Enclave, Near Atulya Chowk,
Sector 17, Dwarka, New Delhi-110078

Complainant

Versus

M/s Clarion Properties Limited

Regd. Office at: - 34, Babar Lane, Bengali
Market, New Delhi-110001

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Mr. Rohit Attri, Advocate

Mr. Lokesh Bhola, Advocate

Complainant
Respondent

ORDER

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



A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name and location of the project	"The Hive" at sector 102, Gurgaon, Haryana
2.	Nature of the project	Commercial
3.	Project area	5.846875 acres
4.	DTCP License no. & validity status	93 of 2012 dated 05.09.2012 valid upto 04.09.2025 30 of 2014 dated 12.06.2014 valid up to 11.06.2024 31 of 2014 dated 12.06.2014 valid up to 11.06.2024
5.	Name of Licensee	M/s Radhika Polymers & Others
6.	RERA registered or not	Registered Vide no. 316 of 2017 dated 17.10.2017 up to 16.11.2024
7.	Welcome letter	20.12.2021 (Page 25 of complaint)
8.	Provisional allotment letter	21.12.2021 (Page 26 of complaint)
9.	Unit No.	OF-662, 6th floor (Page no. 36 of complaint)
10.	Unit area admeasuring	456 sq. ft. (page no. 32 of complaint)
11.	Date of builder buyer agreement	25.02.2022 (Page no. 32 of complaint)
12.	Due date of possession	16.05.2022 (as timeline provide in the registration certificate)
13.	MoU dated	01.11.2022 (Page 96 of complaint)
14.	Discount and Entitlement Clause	6. Only upon clearance of all dues as per the final call letter for offer of possession, the Second Party shall become entitled for receipt of certain amounts ("Discount Amount"), which shall be adjusted from the date of



		<p>clearance of all dues and credit thereof in the account of the First Party. The one time discount amount shall be paid @Rs.618/- per sq. ft. of super area. It is hereby clarified that in the event the Second Party fails to clear all dues in terms of the final call letter for offer of possession within the stipulated period as mentioned in the said final call letter for offer of possession, then in that event the Discount Amount will be reduced @ Rs. 32.5 per square feet per month and payable/adjustable in the final demand subsequent to clearance of all dues as stated in final call letter for offer of possession and. shall further be subject to deduction of income tax at source and other statutory deductions. If the final demand is raised for greater amount than discount amount then in such event the Second party shall be liable to pay the differential amount to the First Party, However the payment of discount amount shall always be subject to the specific compliance of other terms mentioned in this MOU by the Second Party.</p> <p>Provided, The First party shall endeavour to obtain occupation certificate (OC) on or before 30th June, 2022 and issue final call letter to the Second Party. In the event OC is not obtained by the First Party till 30th June, 2022, then an entitlement amount @ Rs. 65/-per sq. ft. of super area (inclusive of all taxes) per month shall be payable to the Second party commencing from 1st July 2022 till the date of receipt of OC. However, the payment/adjustment of entitlement/discount amount shall always be subject to the specific compliance of the terms mentioned in clause 6. & other terms of this MOU by the Second Party. The Second Party also undertakes to comply with all other statutory requirements in respect of the Unit without any liability or responsibility on the part of the First Party. (As per MOU at page no. 97-98 of complaint)</p>
15.	Total sale consideration	Rs.28,35,244/- (As per payment plan at page no. 69 of complaint)



16.	Amount paid by the complainant	Rs.7,94,748/- (As per SOA at page no. 88 of complaint and page 162 of reply)
17.	Occupation certificate	06.02.2023 (Page no. 130 of reply)
18.	Offer of possession	01.02.2024 (Page no. 85 of complaint)
19.	Possession Reminders/demand letters dated	13.12.2023, 01.02.2024, 08.03.2024, 01.05.2024, 21.06.2024, 20.01.2025, 28.02.2025 (Page 133-164 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) Relying on various representations and assurances given by the respondents and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs. 1,00,000/- through Cheque as booking amount towards the booking of the unit bearing no. OF-662, 6th Floor, The Hive, Sector-102, Gurugram, Haryana having carpet area measuring 267 sq. ft. (24.80 sq. mtrs.) to the respondent dated 21.11.2021 for a total sale consideration of the unit i.e. Rs. 28,35,244/- and the same was acknowledged by the respondent. At the time of booking, the complainant was assured that project of the respondent company would be completed and handed over on time.
- b) That the Builder Buyer's Agreement was executed between the parties on 25.02.2022 and the complainant paid an amount of Rs. 2,12,050/- through Cheque dated 25.11.2021 and Rs. 1,00,000/- through Cheque dated 31.01.2022 as asked by the respondent. The allotment of the said unit and agreement has been executed after coming into force of the RERA Act, 2016 but the respondent failed to fulfil and abide by the provisions of the RERA Act, 2016, as the Buyer Builder Agreement executed has been registered and even it is not as per standard format



provided under the Act. Hence, penal action to be initiated against the respondent builder.

- c) As per the Buyer's Builder Agreement the respondent shall endeavour to obtain occupation certificate on or before 30th June, 2022 and issue final call letter to the complainant herein. It was further agreed that in the event OC is not obtained by the respondent herein till 30th June, 2022, then an entitlement amount @ Rs. 65/- per sq. ft. of super area (inclusive of all taxes) per month shall be payable to the second party commencing from 1st July 2022 till the date of receipt of OC.
- d) As per the clause of the Buyer's Builder Agreement the respondent shall endeavour to handover the possession of the unit within of period of 2 years i.e. 24 months from the date of commencement of project, subject to Force majeure & timely payment by the allottee, towards the sale consideration, in accordance with the terms as stipulated in the present Agreement. Therefore, due date of possession comes out to be 16.11.2024.
- e) Further, the complainant having dream of its own unit in NCR signed the agreement in the hope that the unit will be delivered on or before 16.11.2024. The complainant was also handed over one detailed payment plan which was time linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondents.
- f) At the time of execution of the agreement the complainant had objected towards the highly titled and one-sided clauses of the agreement, however, the respondents turned down the concerns of the complainant and curtly informed that the terms and conditions in the Agreement are



standard clauses and thus, no change can be made. A bare perusal of the Agreement reveals that the terms and conditions imposed on the complainant were totally biased in so far as the disparity between the bargaining power and status of the parties, tilted the scale in the favour of the respondents.

- g) That the respondent entered into a Memorandum of Understanding with the complainant, outlining the terms and conditions and agreeing to grant a one-time discount against the said unit.
- h) Despite numerous communications, meetings, and follow-ups from the complainant's end, there has been a significant delay from the respondent side in providing the necessary details and possession of the unit. The Occupancy Certificate (OC) was obtained on 6th February 2023, but the complainant was only informed in March 2024. This inordinate delay has caused considerable inconvenience and financial loss to the complainant, in clear violation of the terms and conditions as outlined in the Memorandum of Understanding (MOU) dated 1st November 2022, which states that possession should be handed over promptly upon receipt of the OC. This delay also constitutes a violation of Section 19(4) of the Real Estate (Regulation and Development) Act, 2016 (RERA), which mandates that the promoter must complete the project on time and hand over possession to the allottee as per the terms of the agreement.
- i) The compensation rent provided by the respondent is incorrect and does not align with the terms outlined in the MOU. As per the MOU, the complainant is entitled to compensation rent from 1st July 2022 until the date the OC was received. Respondent's current calculation does not reflect the period accurately, which is a clear breach of contract under the



Indian Contract Act, 1872. Specifically, Section 73 of the Act mandates compensation for any loss or damage caused by the breach of contract. Furthermore, under Section 18 of RERA, if the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale, the promoter is liable to return the amount received by him with interest and compensation.

- j) During the period the complainant went to the office of respondents several times and requested them to resolve the matter amicably as the continuous delays, lack of communication, and unprofessional behaviour from the respondent side have caused undue stress and financial loss to the complainant. Despite multiple follow-ups and meetings, the issues remain unresolved, and the communication has been inadequate and unresponsive. As it seems it was never up to the respondent to resolve the matter. Hence, the complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- k) This comes as a shock to the complainant as on 15.02.2024, the respondent issued the possession letter along with the statement of account, which was wrongly calculated by the respondent. As per the MOU, the complainant was eligible for discounts and rental amounts which were not deducted from the final demand. Despite numerous emails and notices from the complainant, no correction has been made and no revised statement has been handed over, causing irreparable damages to the complainant.
- l) The complainant contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents not able



to give any satisfactory response to the complainant regarding the status of the abovementioned unit and gave lame on one or other pretext. Thus, no heed has been paid by the respondent.

- m) The complainant kept pursuing the matter with the representatives of the respondents by visiting their office regularly as well as raising the matter to pay the arrears and execution of the builder buyer agreement. But some or the other day the respondent was not able to give any satisfactory response to the complainant or likewise Senior Official of the respondent was not available, etc.
- n) The respondents despite having made multiple meetings to the complainant, the respondents has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated Allottees.
- o) The respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondents are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017. By falsely demanding the unreasonable demand for the abovementioned unit, the complainant has been subjected to unethical/unfair trade practice as well as subjected to harassment in the guise of a biased BBA. The above said acts of the respondent clearly reveal that the "Respondent" with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such Act and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the complainant. That by having intentionally and knowingly induced and having falsely mis-represented to the



complainant and thereby making them to act in accordance to its misrepresentations and owing to all the deliberate lapses/delays on the part of the "Respondent", the respondent is liable to make as being requisitioned/claimed by the complainant.

- p) Finally, the complainant consulted the matter with an Advocate and sent a Legal Notice dated 06.07.2024 which was duly received by the respondent company.
- q) That the respondent is demanding unreasonable amount from the complainant a way to extract the maximum payment from the buyers. The complainant approached the respondents and asked about the reason of the unreasonable payments. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- r) It is abundantly clear that the respondents have played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondents had further malafidely failed to implement the BBA executed with the complainant. And cunningly trying to forfeit the unit of the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.



- s) The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
- t) That the respondents is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondents and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- u) That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondents, from the respondents point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
- v) The complainant after losing all the hope from the respondents, having their dreams shattered of owning annuity & having basic necessary



facilities in the vicinity of "The Hive" Project and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainant.

4. The complainant has sought following relief(s):

- I. Allow the complainant directing the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BA.
- II. Order the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
- III. Direct the respondent, not to cancel allotment of the Unit.
- IV. Order the respondent to provide the delayed possession compensation, discount and rental agreed by the respondent to be paid to the complainant as agreed in BBA and MOU.
- V. Direct the respondent to provide the interest on the delayed possession as well as on accrued rental till the date of the peaceful possession with revised calculation of the Statement of Accounts.
- VI. Direct the respondent not to charge anything that is not a part of the Buyers Agreement for Unit and MOU.
- VII. Direct the respondent to provide the revised lay out plan of the said unit.
- VIII. Direct the respondent to accept the further amount due from the complainant.
- IX. Direct the respondent not charge any penalty/interest from the complainant and to cooperate by providing the demand letter.



- X. Restrain the respondent from raising fresh demand for payment for any head, which is not the part of the payment plan as agreed at the time of booking.
5. 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 based on these undisputed documents and submissions made by the complainant.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds:-
- a) The complainant in the year 2021 showed her interest and willingness in the project called 'The Hive' and provisionally applied vide Application, dated 21.11.2021 for a Unit No.OF-662 in the project of the respondent developed by the respondent.
 - b) Subsequently, the complainant had was provisionally allotted Unit No.OF-662 in the said project, vide Provisional Allotment Letter, dated 20.12.2021 and the complainant had paid Rs.1,00,000/- towards the booking amount.
 - c) Accordingly, a Buyer's Agreement, dated 25.02.2022 was executed with complainant qua the Unite No.-OF 662 for total consideration of Rs.28,35,244/- excluding other charges.
 - d) As per the Clause 7 of the said Agreement, the possession of the Unit was to be offered as per the registration by HRERA or such extension as extended by HRERA. The HRERA Registration Certificate bearing Registration No.316 OF 2017 dated 17.10.2017 was valid upto 16.05.2022. Thereafter, an extension of six months on account of COVID-19 was granted to the respondent. Hence, the project completion was 16.11.2022. On 03.02.2023, further extension was granted by the HRERA,



which was valid upto 16.11.2024. Thus, the due date of possession of the Unit as per Clause 7 was 16.11.2024.

- e) Thereafter, the parties i.e., complainant and respondent executed a Memorandum of Understanding dated 01.11.2022 whereby the complainant was entitled to the receipt of certain discount amounts, subject to terms of the MoU. However, as per Clause 6 of the MoU, the complainant was entitled to receipt of the discount amount only upon clearance of all dues as per the final call letter for offer of possession, which shall be adjusted from the date of clearance of all dues and credit thereof in the account of the First Party. It is submitted that since the complainant has admittedly not paid the outstanding amounts as per the Demand letters raised by the respondent, therefore, the complainant is not entitled for any discount as per the MOU and thus, the same cannot be claimed by the claimant.
- f) As per the Clause 4 of the MoU, it was agreed between the complainant and the respondent that the complainant will be entitled to receive/ adjustment of the Discount Amount, subject to the terms and conditions of the MoU only upon fulfilment of the obligations by the complainant under the Buyer's Agreement.
- g) Further, as per Clause 5 of the MoU, the complainant was liable to comply with the terms and conditions under the Buyer's Agreement and the MoU and acquire the Unit and upon issuance of the final call letter for offer of possession and clear all the dues in accordance with the final call letter for offer of possession.
- h) It is submitted that Clause 5 of the said Agreement provides that the complainant agrees and understands that the time is the essence with respect to the payment of the total price and other charges, deposits and

amounts payable by the complainant as per the said Agreement and/or as demanded by the respondent from time to time and also to perform/observe all the other obligations of the complainant under the said Agreement. It was further agreed between the parties that the respondent could only complete the Project if complainant makes the payments as per the schedule of payment and agrees not to hold the respondent responsible/ liable for delay in completion of the Project due to default of the complainant in making timely payments.

- i) That the claimant is a defaulter and defaulted time and again for making the payments due from her. The respondent had issued following letters/ reminders to complainant for making the payments to the complainant without there being under any obligation, calling upon her to make payment of the part consideration for the said Unit. Payment Request Letters/ Reminder Letters/ Final Opportunity Letters/Emails, dated 02.04.2022, 21.04.2022, 21.04.2022, 08.06.2022, 21.07.2022, 21.07.2022, 20.08.2022, 20.08.2022 along with speed-post receipt and tracking report were addressed by the respondent to the complainant.
- j) Meanwhile, the respondent had applied for the Occupation Certificate on 02.08.2022 which was received by the respondent on 06.02.2023, much before the due date of possession i.e., 16.11.2024. Thereafter, the respondent had approached the complainant on multiple occasions for clearance of the balance payment and handover of the possession of the said Unit. However, the claimant miserably failed to pay the balance payment and ignored the call letters for handing over of the possession of the said Unit by respondent to the complainant.
- k) The respondent had vide email, dated 13.12.2023 informed the complainant that the said Unit was ready for handover and had further



requested to schedule the handover. For the quick and smooth handover of the possession of the unit allotted to the complainant the respondent had provided a list of documents and account of details. However, the complainant did not pay any heed to the communications from respondent's side and failed to comply with the same. Thereafter, the respondent had sent multiple Call Letters along with Statement of Account and Reminders vide email and speed-post, for clearing the outstanding payment for the said Unit on 13.12.2023, 01.02.2024, 08.03.2024, 01.05.2024, 21.06.2024, 20.01.2025, 21.01.2025, 28.02.2025. However, it is pertinent to state that rather than clearing the outstanding payment, the complainant kept on dilly-dallying the same in order to evade the penalties and interest accrued due to her defaults.

- l) The complainant, till date has paid only an amount of Rs.7,94,748/- out of the total consideration amount qua the said Unit. It is worth mentioning that the complainants have made last payment to the respondent way back on 29.08.2022 for an amount of Rs.1,21,598/- and thereafter, the complainant has chosen not to pay any amount. Thus, on account of default and as per the terms and conditions of the said Agreement, an amount of Rs. 24,47,098/- including stamp duty & registration fee and excluding interest still needs to be paid by the complainant towards the balance amount.
- m) Further, as per Clause 7 of the Agreement, the respondent was liable to offer the possession of the Unit as per the time granted under the registration by HRERA or such extension thereof as extended by the HRERA. As per the Extension to Registration No.316 of 2017, dated 17.10.2017 the respondent was liable to handover the possession of the Unit to the complainant by 16.11.2024. It is pertinent to reiterate here



that the respondent had informed the complainant that the Unit allotted to the complainant was ready for handover and further requested the complainant to clear the outstanding amounts. However, the complainant had wilfully defaulted in clearing the outstanding amount. Hence, the complainant is not entitled to the claims made by her. It is pertinent to mention here that the provisions of the RERA are to be read in conjunction with the Clause 9.3 of the Buyer's Agreement which mentions about as to when can an allottee be termed as defaulter.

n) Further, it is submitted that the complainant has failed to clear the outstanding dues payable by her and has wilfully defaulted to clear the same. Respondent has time and again reached out to the complainant to clear the dues however, the complainant has not made any efforts to clear the same. The complainant has wilfully abstained from performing her obligations and now the complainant is falsely and vexatiously accusing the respondent to make the respondent pay for her defaults and negligence.

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, Haryana, the jurisdiction of Haryana Real

Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent, not to cancel allotment of the Unit.

F.II Order the respondent to provide the delayed possession compensation, discount and rental agreed by the respondent to be paid to the complainant as agreed in BBA and MOU.

F.III Direct the respondent to provide the interest on the delayed possession as well as on accrued rental till the date of the peaceful possession with revised calculation of the Statement of Accounts.



13. The above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication.
14. The complainant booked a unit no. OF-662, 6th floor in the project of the respondent namely, "The Hive" admeasuring super area of 456 sq. ft. for an agreed sale consideration of Rs.28,35,244/-. Herein, the complainant intend to continue with the project and is seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 18(1) Proviso 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."
(Emphasis supplied)

15. Clause 7.1 of the buyer's agreement dated 25.02.2022 provides for handing over of possession and is reproduced below:

7.1 Schedule of possession of the said unit
The Promoter assures to offer the possession of the Unit as per agreed terms and conditions on or before time granted under the registration by the HARERA or such extension thereof as extended by HARERA unless there is delay due to "force majeure" which shall mean all such circumstances or factors not in control of the Promotor, including, but not limited to, shortage of materials, inflation or recession in the market, dispute by the contractor, Court orders, or by reason of war, or enemy action or earthquake or any act of God, or any act, notice, order, rule or notification of the Government and/or any other public or competent authority, affecting the regular development of the Project (herein after referred to as "force majeure").
(Emphasis supplied)

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default

under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. Due date of Possession: As per clause 7.1 of buyer's agreement dated 25.02.2022, the respondent-promoter proposed to handover the possession of the said unit as per the agreed terms and conditions on or before the time granted under the registration by the Authority. Therefore, as per clause 7.1 of the buyer's agreement dated 25.02.2022, the due date of possession comes out to be 16.05.2022.

18. 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 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]

(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.”

19. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. 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., 12.02.2026 is @ 8.80 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

21. **Rate of interest to be paid by the complainant in case of 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. 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. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same as is being granted to them in case of delayed possession charges.
23. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of Section 11(4)(a) of the Act by not handing over the possession by the due date. By virtue of clause 7.1 of the buyer's agreement executed between the parties on 25.02.2022, the possession of the booked unit was to be delivered by 16.05.2022. The Occupation certificate for the project was granted by the concerned authority on 06.02.2023 and thereafter, the possession of the subject unit was offered to the complainant on 01.02.2024. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to handover physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 25.02.2022 to hand over the possession within the stipulated period.
24. Section 19(10) of the Act obligates the allottees 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 06.02.2023. The respondent offered the possession of the unit in question to the complainants only on 01.02.2024, 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. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 16.05.2022 till the expiry of 2 months from the date of offer of possession (01.02.2024) which comes out to be 01.04.2024.

25. Accordingly, the non-compliance of 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 delayed possession at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 16.05.2022 till the expiry of 2 months from the date of offer of possession (01.02.2024) which comes out to be 01.04.2024 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

26. Further, clause 6 of the MOU executed between the parties on 01.11.2022 provides for discount as well as entitlement amount. Same is reiterated herein for ready reference:

*6. Only upon clearance of all dues as per the final call letter for offer of possession, the Second Party shall become entitled for receipt of certain amounts ("Discount Amount"), which shall be adjusted from the date of clearance of all dues and credit thereof in the account of the First Party. **The one-time discount amount shall be paid @Rs.618/- per sq. ft. of super area.** It is hereby clarified that in the event the Second Party fails to clear all dues in terms of the final call letter for offer of possession within the stipulated period as mentioned in the said final call letter for offer of possession, then **in that event the Discount Amount will be reduced @ Rs. 32.5 per square feet per month** and payable/adjustable in the final demand subsequent to clearance of all dues as stated in final call letter for offer of possession and shall further be subject to deduction of income tax at source and other statutory deductions. If the final demand is raised for*



greater amount than discount amount then in such event the Second party shall be liable to pay the differential amount to the First Party, However the payment of discount amount shall always be subject to the specific compliance of other terms mentioned in this MOU by the Second Party.

*Provided, The First party shall endeavour to obtain occupation certificate (OC) on or before 30th June, 2022 and issue final call letter to the Second Party. **In the event OC is not obtained by the First Party till 30th June, 2022, then an entitlement amount @ Rs. 65/-per sq. ft. of super area (inclusive of all taxes) per month shall be payable to the Second party commencing from 1st July 2022 till the date of receipt of OC. However, the payment/adjustment of entitlement/discount amount shall always be subject to the specific compliance of the terms mentioned in clause 6. & other terms of this MOU by the Second Party. The Second Party also undertakes to comply with all other statutory requirements in respect of the Unit without any liability or responsibility on the part of the First Party.***

27. Therefore, the respondent is directed to provide the discount as well as entitlement amount to the complainant in terms of clause 6 of the MOU executed between the parties on 01.11.2022.

F.IV Allow the complainant directing the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BA.

F.V Order the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

28. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant.

29. The Authority observes that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 06.02.2023. Subsequently, the respondent offered possession of the subject unit to the complainant-allottee on 01.02.2024.

30. Pursuant to Section 17(1) of the Real Estate (Regulation and Development) Act, 2016, the respondent-promoter is mandated to deliver physical



possession of the subject unit to the complainant, complete in all respects, in accordance with the specifications set out in the buyer's agreement. Thereafter, under Section 19(10) of the Act, the complainant-allottee is required to accept possession within a period of two months.

31. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.

32. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. 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. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

F.VI Restrain the respondent from raising fresh demand for payment for any head, which is not the part of the payment plan as agreed at the time of booking.

F.VII Direct the respondent to accept the further amount due from the complainant.

F.VIII Direct the respondent not charge any penalty/interest from the complainant and to cooperate by providing the demand letter.

F.IX Direct the respondent not to charge anything that is not a part of the Buyers Agreement for Unit and MOU.

33. The above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication.



34. The Authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021** titled as "**Vineet Choubey V/s Pareena Infrastructure Private Limited**" and also in the complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V/s Emaar MGF Land Limited**", has already decided that the promoter cannot charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. Therefore, the respondent shall not charge anything from the complainant which is not the part of the buyer's agreement and is directed to charge the demands relying on the above said orders.
35. Hereby, both the parties are bound to adhere to the contractual obligations agreed between the parties vide the said agreement. Therefore, the respondent shall raise demands only in accordance with the agreed payment plan and the complainant is also bound to make payment of demands raised. **F.X Direct the respondent to provide the revised lay out plan of the said unit.**
36. As per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is obligated to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

G. 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 delay possession charges to the complainant against the paid-up amount at the prescribed rate of 10.80%



- p.a. for every month of a delay from the due date of possession, i.e., 16.05.2022 till the date of offer of possession (01.02.2024) plus two months i.e., 01.04.2024, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The respondent is directed to provide the discount as well as entitlement amount to the complainant in terms of clause 6 of the MOU executed between the parties on 01.11.2022.
 - III. 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(z) of the Act.
 - IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
 - V. The respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
 - VI. The respondent is directed to execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per



norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

VII. The respondent is directed to provide requisite layout plan of the allotted unit in question to the complainant within a period of 1 month from the date of this order.

VIII. The respondent shall not charge anything from the complainant which is not part of the agreement.

38. Complaint stands disposed of.

39. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.02.2026

HARERA
GURUGRAM