

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

**Date of Order: 05.02.2026**

NAME OF THE BUILDER		EMINENCE TOWNSHIPS INDIA PRIVATE LIMITED	
PROJECT NAME		"EMINECE KIMBERLEY SUITES"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2181/2025	Aman Daliya and Deepak Daliya V/S Eminence Townships India Private Limited	Sh. Gaurav Rawat Advocate for complainant Sh. Sumit Mehta Advocate for respondent
2.	CR/2199/2025	Rajesh Thareja V/S Eminence Townships India Private Limited	Sh. Gaurav Rawat Advocate for complainant Sh. Sumit Mehta Advocate for respondent
3.	CR/2200/2025	Rajesh Thareja V/S Eminence Townships India Private Limited	Sh. Gaurav Rawat Advocate for complainant Sh. Sumit Mehta Advocate for respondent

**CORAM:**

Shri Phool Singh Saini

**Member**

**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority 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 allottee as per the agreement for sale executed *inter se*.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Eminence Kimberley Suites" (Commercial Colony) being developed by the same respondent/promoter i.e., Eminence Townships India Private Limited. The terms and conditions of the allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and others reliefs.
3. The details of the complaints, reply to status, unit no., date of allotment, date of agreement, due date of possession, total sale consideration, total paid amount and relief sought are given in a table below:

Project Name and Location		Eminence Townships India Private Limited at "Eminence Kimberley Suites" situated in Sector-112, Gurugram	
Occupation Certificate: 11.07.2019			
Complaint No., Case Title	CR/2181/2025 Aman Daliya and Deepak Daliya V/S Eminence Townships India Private Limited	CR/2199/2025 Rajesh Thareja V/S Eminence Townships India Private Limited	CR/2200/2025 Rajesh Thareja V/S Eminence Townships India Private Limited
Reply status	24.09.2025	24.09.2025	24.09.2025
Unit no.	B-0203, 2 <sup>nd</sup> floor [As per page no. 82 of the complaint]	B-0508, 5 <sup>th</sup> floor [As per page no. 48 of the complaint]	B-0510, 5 <sup>th</sup> floor [As per page no. 48 of the complaint]
Area admeasuring	795 sq. ft. (super area) [As per page no. 82 of the complaint]	601 sq. ft. (super area) [As per page no. 48 of the reply]	795 sq. ft. (super area) [As per page no. 48 of the reply]
Date of allotment	02.09.2016 [As per page no. 107 of the complaint]	14.10.2012 [As per page no. 29 of the complaint]	14.10.2012 [As per page no. 29 of the complaint]
Date of execution of agreement	21.11.2013 [As per page no. 81 of the complaint]	05.09.2013 [As per page no. 47 of the complaint]	05.09.2013 [As per page no. 47 of the complaint]
Due date of handing	01.12.2017	01.12.2017	01.12.2017

over of possession	[ <b>Note:</b> Due date to be calculated 36 months from the date of start of ground floor slab i.e., 01.06.2014 plus grace period of 6 months]	[ <b>Note:</b> Due date to be calculated 36 months from the date of start of ground floor slab i.e., 01.06.2014 plus grace period of 6 months]	[ <b>Note:</b> Due date to be calculated 36 months from the date of start of ground floor slab i.e., 01.06.2014 plus grace period of 6 months]
<b>Total Consideration / Total Amount paid by the complainant</b>	<b>TSC:</b> <b>Rs.55,64,490/-</b> (As per structure of payments on page no. 106 of the complaint) <b>AP:</b> <b>Rs.54,54,758/-</b> (As stated by the counsel for the complainant during proceedings dated 05.02.2026)	<b>TSC:</b> <b>Rs.40,83,295/-</b> (As per structure of payments on page no. 73 of the complaint) <b>AP:</b> <b>Rs.37,65,428/-</b> (As alleged by the complainant on page no. 26 of the complaint)	<b>TSC:</b> <b>Rs.54,45,240/-</b> (As per structure of payments on page no. 73 of the complaint) <b>AP:</b> <b>Rs.51,01,128/-</b> (As alleged by the complainant on page no. 26 of the complaint)

**The complainant in the above complaint(s) has sought the following reliefs:**

1. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of SBA.
2. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.
3. Direct the respondent to pay the balance amount due to the complainants from the Respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/ sale deed.
4. Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
5. Direct the respondent to get the conveyance deed executed in favour of complainants.
6. Direct the respondent not to charge maintenance before handing over of possession.
7. Direct the respondent to set aside offer of possession cum demand letter on account of offer of possession.
8. Direct the respondent to refund the excess amount collected from the complainants along with offer of possession.
9. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.
10. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
11. Direct the respondent to provide the exact lay out plan of the said unit.

**Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**  
TSC Total Sale consideration  
AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of handover the physical possession of the allotted unit along with delayed possession charges and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case *CR/2181/2025, case titled as Aman Dahiya and Deepak Dahiya V/S Emimence Townships India Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua handover the physical possession of the allotted unit along with delayed possession charges and others.

**A. Unit and project related details**

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

S. No.	Particulars	Details



1.	Name of the project	Eminence Kimberley Suites, Sector 112, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project Area	2.875 acres
4.	DTCP License No.	35 of 2012 dated 22.04.2012 valid up to 21.04.2025
5.	Name of Licensee	KPS Colonizers Pvt. Ltd.
6.	RERA Registered/ Not Registered	74 of 2017 dated 21.08.2017 valid up to 30.12.2018
	Extension of RERA registration	HARERA/GGM/REP/RC/74/2017/EXT/100/2019 Dated-12.05.2019 valid up to 31.12.2020
7.	Unit no.	B-0203 and 2 <sup>nd</sup> floor (As per page no. 82 of the complaint)
8.	Unit admeasuring	795 sq. ft. (super area) (As per page no. 82 of the complaint)
9.	Date of execution of buyer's agreement	21.11.2013 (As per page no. 81 of the complaint)
10.	Transfer letter in the name of complainants	02.09.2016 (As per page no. 105-106 of the reply)
11.	Allotment form in the name of the complainants	02.09.2016 (As per page no. 107 of the reply)
12.	Possession clause	<b>Schedule for possession of the said unit</b> 27. <i>The company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the allottee(s) of sale price and other charges due and payable according to the payment plan applicable to him/her/them and/or as demanded by the company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the said unit(s) shall, however, be offered only after grant of completion/occupation certificate from the competent Authority.</i>

*Per*



		(Emphasis supplied) (As per page no. 92 of the complaint)
13.	Date of start of construction	01.06.2014 (As mentioned on page no. 7 of the reply)
14.	Due date of delivery of possession	01.12.2017 (Note: Due date to be calculated 36 months from the date of start of ground floor slab i.e., 01.06.2014 plus grace period of 6 months)
15.	Total sale consideration	Rs.55,64,490/- (As per structure of payments on page no. 106 of the complaint)
16.	Total amount paid by the complainant	Rs.54,54,758/- (Stated by the counsel for the complainant vide proceedings dated 05.02.2026)
17.	Occupation Certificate	11.07.2019 (As per page no. 71 of the reply)
18.	Offer of possession	23.07.2019 (As per page no. 108 of the complaint)
19.	Reminder letters	15.07.2020, 24.08.2021 & 26.03.2025 (As per page no. 88-90 of the reply)

**B. Facts of the complaint:**

8. The complainants have made the following submissions:

- a. The respondent, advertised about its new project namely 'Eminence Kimberly Suites' situated in the Sector 112, Gurugram, Haryana, in a land parcel admeasuring a total area of approximately on the 2.875 acres of land, under the license no. 35 of 2012 dated 22.04.2022, issued by DTCP, Haryana, Chandigarh. The respondent painted a rosy picture of the project in its advertisements making tall claims.

*PS*

- b. In 2012, the respondent Company issued an advertisement announcing a commercial colony project "Eminence Kimberly Suites" situated in the Sector 112, Gurugram, Haryana, in a land parcel admeasuring a total area of approximately on the 2.875 acres of land, under the license no. 35 of 2012 dated 22.04.2022, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got Building Plan Approval from the authority.
- c. The complainants while searching for a unit/accommodation was lured by such advertisements and calls from the brokers of the Respondent for buying a commercial in their project namely Eminence Kimberly Suites. The respondent company told about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the national capital region. The respondent handed over one brochure to the complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.
- d. Relying on various representations and assurances given by the Respondent company and on belief of such assurances, family members of the complainants i.e. Surender Singh Dahiya, Meenakshi Dahiya and Urvashi Dahiya, booked a commercial unit in the project by paying an towards the booking of the said unit bearing no. B-0203, 2<sup>nd</sup> Floor, in Sector 112, having super area measuring 795 sq. ft. to the respondent November, 2013 and the same was acknowledged by the respondent.

- e. The respondent sent an allotment letter to family members of the complainant confirming the booking the said unit and also mentioning the moonshine reputation of the company and the location of project. Further, providing the details of payment to be made by the complainants.
- f. The respondent sent allotment letter to original allottee, confirming the booking of the unit, allotting a unit no. B-0203, 2<sup>nd</sup> Floor, (hereinafter referred to as 'unit') measuring 795 Sq. Ft (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 53,14,490.00, which includes basic price, Plus EDC and IDC, and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- g. Buyer's agreement was executed between complainant and respondent on 21.11.2013. As per clause 27 of the buyer's agreement the respondent had to deliver the possession within a period of 36 months plus 6 months from the date of start of ground floor roof slab of particular tower. The date of start of ground floor roof slab of particular tower is 01.06.2014. Therefore, the due date of possession is calculated from the date of agreement i.e. 01.06.2014. Hence, the due date of possession comes out to be 01.06.2017.
- h. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 54,54,758/- towards the said unit against the total sale consideration of Rs. 53,14,490/-.
- i. The family members of the complainants i.e. Surender Singh Dahiya, Meenakshi Dahiya and Urvashi Dahiya vide agreement to sell dated



27.04.2016, transfer the said unit in favour of the complainants. Thereafter, application form dated 27.04.2016 was submitted by the complainants to respondent to get the said property transferred / endorsed in favour of complainants, to which respondent issued transfer letter dated 02.09.2016 in favour of complainants mentioning that the said captioned property now stands in favour of the complainants.

- j. Though the payment to be made by the complainants was to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground. The payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the Respondent and asked about the status of construction and also raised objections towards non-completion of the project. 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.
- k. During the period the complainants had multiple discussion with the builder regarding the progress of the project but they always gave false assurances that project will be leased out soon after completion of construction and the complainants have to wait for some more but were not welcomed there and even there was no proper approached road. The complainants even after paying amounts still received

*B*



nothing in return but only loss of the time and money invested by them.

- l. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.
- m. In terms of clause 27 of the said buyer's agreement, respondent was under dutiful obligation to complete the construction and to offer the possession within 36 months from the date of start of construction. That complainants approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainants that the construction will get completed soon.
- n. Complainants requested the respondent to show/inspect the unit before complainants pay any further amount but respondent failed to reply. Respondent despite having made multiple tall representations to the complainants, the respondent 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 complainant after many request and emails; received the intimation/offer of possession on 23.07.2019. Along with the above



said letter of offer of possession respondent raised several illegal demands on account of the following which are actually not payable as per the buyer agreement i.e. electricity charges, dual energy meter, fiber to the home, VAT, FTTH And power backup charges etc etc.

- p. Offering possession by the respondent on payment of charges which the buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession, those charges were never payable by the complainants as per the agreement, by the complainant and hence the offer of possession.
- q. The respondent asked the complainant to sign the indemnity bond as perquisite condition for handing over of the possession. Complainant raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainant but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainant do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.
- r. The fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA. The Allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- s. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the respondent but even the



settlement-cum-amendment agreement is also heavily loaded in favour of the respondent. Needless to mention that such one-sided Agreements have been held to be unconstitutional and hence in valid by the Honourable Supreme Court and the Honourable High Courts in number of cases.

- t. The execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity.
- u. The present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent 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

*Ar*

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 complainants is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainants is also entitled for any other relief which they are found entitled by this Hon'ble Authority.

**C. Relief sought by the complainant:**

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

- i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of SBA.
- ii. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.
- iii. Direct the respondent to pay the balance amount due to the complainants from the Respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/ sale deed.
- iv. Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

- v. Direct the respondent to get the conveyance deed executed in favour of complainants.
- vi. Direct the respondent not to charge maintenance before handing over of possession.
- vii. Direct the respondent to set aside offer of possession cum demand letter on account of offer of possession.
- viii. Direct the respondent to refund the excess amount collected from the complainants along with offer of possession.
- ix. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.
- x. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
- xi. Direct the respondent to provide the exact lay out plan of the said unit.

**D. Reply by the respondent:**

10. The respondent has contested the complaint on the following grounds:
- a. The complainant in order to deceive the present learned courts have in very clandestine manner has tried presenting an exorbitant amount of delay as per the list of dates and events and further, as per the narration in his facts, by putting the factum of offer of possession which is an event that pertains to 2019 after the claimed alleged events which took place in the year 2020 to 2025. The said attempted act of misrepresentation and non-sequential dates and events got overlooked by the inspection branch at the time of receipt of complaint and further, the same does not appear to be a clerical error on the part of the complainant but appears to be an error of

- intention in order to highlight the hardships which never got faced in reality by the complainant.
- b. The complaint filed before the present authority is false, vexatious, and based on distorted facts, and therefore, should be dismissed at the threshold. That the primary grievance of the complainant in its entire complaint pertains to possession of the unit. While on one hand the complainant himself has already placed on record the offer of possession dated 23.07.2019, thus, the entire grievance of the complainant falls flat on the said account itself and the complaint is liable to be dismissed.
- c. The present complaint filed by the complainants suffers from concealment and thus, is liable to be dismissed on this score alone.
- d. The complainant has not approached this Hon'ble Authority with clean hands and have deliberately suppressed material facts, warranting the dismissal of the present complaint on the grounds of '*Suppressio Veri*'. The complainant has correctly stated that the possession was required to be delivered within 36 months (plus 06 months) from the date of casting of ground floor roof slab of particular tower in which the unit is situated and the date of start of construction in which the unit of the complainant is situated, the ground floor roof slab got casted on 01.06.2014. However, it is stated that this date of possession was governed with the other terms and conditions i.e. force majeure conditions and delay on account of conditions beyond the control of the respondent and accordingly, on account of government delays the due date of possession on account of multiple force majeure conditions.
- e. The respondent applied for the revision of the building plan, in order to ensure a better and optimized building layout and better drainage



systems in the building on 04.10.2016 and received an in-principle approval for the same on 01.09.2017, whereafter the suggestions were invited from all the existing allottee (s) including the complainants, and it was only after due scrutiny of the compliance of the letter dated 01.09.2017 by the Learned STP, the Learned Chief Town and Country Planning, Haryana at the office of Director, Town and country planning Department approved the Building Plan on 08.02.2018. Thus, thereby causing a delay of 493 days i.e. the intervening period between 01.04.2016 to 08.02.2018 on account of Departmental / Government Delays in approval of revised "building plan", thereby making the Due Date for Offer of Possession as 07.04.2019.

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

*RS*

the period of delay of 319 days is due to be exempted on account of Force majeure conditions and the due date for possession stood extended up to 20.02.2020.

- g. That even post existence of the force majeure condition, and exemption on the said account, the respondent continued with the works at the project site and immediately upon receipt of revised / corrected EDC / IDC Demand and renewal of license on 13.03.2019, the Respondents applied for part occupancy certificate to DGTCP, Haryana at Chandigarh on 27-03-2019 and subsequently the DGTCP, Haryana post its Inspection & as per provisions of applicable law, have already granted the occupancy certificate on 11-07-2019. That the period taken by the government office for grant of part occupancy certificate from the date of application is also covered under force majeure conditions and thus the period for offer of possession stood further, extended by 106 days and the due date for possession got extended up to 05-06-2020.
- h. Even after existence of the force majeure condition and numerous occasions of ban of construction by NGT and other district authorities due to increase in pollution levels, the respondent was excessively diligent in executing the works thus, the possession of the unit was offered soon after the occupancy certificate dated 11.07.2019 and hence, the possession was given well before the due date for offer of possession and the offer of possession was issued by the respondent in the name of the complainants on 23.07.2019. Thus, the offer of possession was given to the complainants in a timely manner and even before lapse of the agreed time period as specified in the application form & buyer's agreement. Thus, the complaint is liable to be dismissed on this account itself.



- i. Further in accordance with the terms of the buyer's agreement, offer of possession was given on 23.07.2019. Whereafter, after the lapse of 90 days the maintenance charges are applicable and are required to be paid by the allottee of the unit. That in addition dues on account of maintenance charges are also pending and payable by the complainant and in order to evade the liability of due payments, the complainant has filed the present bogus complaint and thus, the same be dismissed with directions to the complainant to come forward and take handover of the unit for which due possession has already been offered.
- j. Further in accordance with catena of judgements passed by the Hon'ble Supreme Court, that at places where the complainants / buyers are in default of their payment obligations under the terms of the buyer agreement, they cannot claim for relief of the refund or compensation.
- k. The complainants had voluntarily executed the buyer builder agreement, wherein clause 31 expressly stipulates that execution of the requisite indemnity/undertaking documents is a pre-condition for issuance of the offer of possession. Accordingly, the respondent, by requiring the complainants to execute such indemnity documents prior to handing over possession, are only enforcing the contractual terms mutually agreed between the parties. It is, therefore, emphatically denied that the respondents are acting in excess of or beyond the scope of the buyer's agreement, rather, the respondents are strictly adhering to and complying with the express terms and conditions of the said agreement.
- l. The present complaint is not maintainable as it is devoid of true and correct facts and is, therefore, liable to be dismissed at the very

- threshold. The project already stands duly completed and the offer of possession has been duly issued to the complainants. The claim raised is wholly premature, misconceived, frivolous, and vexatious, particularly in view of the fact that no default whatsoever can be attributed to the respondent, the parties having mutually agreed to the terms under the buyer's agreement.
- m. That despite delayed payments from the complainant, the above-named respondent, the possession of the allotted unit has been offered more than 06 years back and the complainant has dues payable in respect to the due instalments and interest and the complainant purely in a fit of rage in order to evade her liability in respect to the payment of her dues, interest applicable on the due installments and monthly maintenance amount has filed the present bogus and unfounded complaint against the respondent. Thus, the same is liable to be dismissed with heavy cost.
11. 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:**

12. 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**

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the

project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E.II Subject matter jurisdiction**

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

#### **Section 11**

....

(4) 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.

15. 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. Finding on objections raised by the respondent:**

#### **F.I Objection regarding delay due to force majeure events.**

16. The respondent has raised a contention that the delay in the construction of the project was attributable to force majeure events, including the inordinate and excessive delay in the renewal of the respondent's license by the Department of Town and Country Planning (DTCP) under the Haryana Development and Regulation of Urban Areas Act, 1975, restrictions and suspensions on construction imposed by various



pollution control authorities in Haryana, the implementation of various social schemes by the Government of India, and various orders passed by the National Green Tribunal (NGT). However, the said contentions are devoid of merit, as the respondent-promoter has failed to deliver possession of the project within the timeline stipulated in the apartment buyer agreement dated 21.11.2013. The force majeure claims raised by the respondent do not absolve it from the contractual obligation to hand over possession as agreed upon, and consequently, the respondent's failure to comply with the terms of the agreement constitutes a breach of contract.

17. Furthermore, while it is acknowledged that certain allottees may have failed to make timely payments of instalments but all the allottees cannot be expected to suffer for the actions of a few. The orders passed by the government, authorities, or courts imposing temporary bans on construction in the NCR region were for a brief period, and such contingencies should have been anticipated at the outset of the project. Therefore, these temporary setbacks cannot be cited as a justification for the respondent-promoter's delay in project completion. It is a well-established principle of law that a party cannot benefit from its own wrong, and as such, the respondent-promoter is not entitled to any leniency on the basis of the aforementioned reasons.

**G. Findings on the relief sought by the complainant:**

- G.I Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of SBA.**
- G.II Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the**



respondent in spite of the fact that the complainants desires to take the possession.

**G.III Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/ sale deed.**

18. The aforesaid reliefs are being taken up and adjudicated conjointly, inasmuch as the same are interlinked and arise out of a common set of facts and cause of action.
19. The complainant was allotted a unit in the project of respondent "Eminence Kimberley Suites" in Sector-112, Gurugram for a total sale consideration of Rs.55,64,490/-. The buyer's agreement was executed on 21.11.2013 between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.54,54,758/-.
20. As per clause 27 of the buyer's agreement dated 21.11.2013, due date of possession is to be calculated 36 months from the date of start of the ground floor slab of the particular tower in which the booking is made with a grace period of six months after the expiry of 36 months. The possession clause is reproduced below for the ready reference:

**Clause 27**

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

**(Emphasis supplied)**

21. Therefore, the due date for possession is to be calculated 36 months from the date of start of ground floor slab i.e., 01.06.2014 with a grace period of 6 months. Thus, the due date for possession of the unit comes to 01.12.2017.

22. The respondent in its reply mentioned that the occupation certificate of the project was obtained on 11.07.2019 and the offer of possession was made on 23.07.2019. Thereafter, reminders for taking over of possession on payment of outstanding dues were issued on 15.07.2020, 24.08.2021 and 26.03.2025.
23. As per the documents placed on record by the respondent, the Authority has observed that the due date of possession was 01.12.2017 but the occupation certificate of the project was obtained on 11.07.2019 and offer of possession has been made on 23.07.2019. The complainant took a plea that offer of possession was to be made in 2017, but the respondent has failed to handover the physical possession of the allotted unit within stipulated time frame.
24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and seeking delay possession charges. However, proviso to section 18 of the Act 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 the possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules 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.
25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is

reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. 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., 05.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

27. 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;*

*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.*

28. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 27 of the buyer's agreement executed between the parties on 21.11.2013, and the due date of as per buyer's agreement as 01.12.2017. Occupation certificate was granted by the concerned authority on 11.07.2019 and thereafter, the possession of the subject flat was offered to the complainant on 23.07.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical



possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.11.2013 to hand over the physical possession within the stipulated period.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 11.07.2019. The respondent offered the possession of the unit in question to the complainant only on 23.07.2019, 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.
30. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainants have paid almost 99% of sale consideration.
31. The promoter is responsible for all the obligations, responsibilities and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give



possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to continue with the project, without prejudice to any other remedy available, to pay the delay possession charges on amount received by him in respect of the unit with interest at such rate as may be prescribed.

32. 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 delayed possession charges at the prescribed rate of interest i.e., @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the due date of possession (01.12.2017) till the date of offer of possession (23.07.2019) to the complainant.

**G.IV Direct the respondent not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.**

33. The complainants have sought a direction restraining the respondent from insisting upon execution of any Indemnity-cum-Undertaking indemnifying the promoter against legal claims, as a condition precedent to the execution of the conveyance deed.

34. At the outset, it is observed that execution of the conveyance deed is a statutory obligation of the promoter in terms of Section 17 of the Real Estate (Regulation and Development) Act, 2016, which mandates transfer of title to the allottee upon receipt of the requisite consideration. The promoter cannot impose conditions that are arbitrary, unilateral, or contrary to the provisions of the Act and the terms of the buyer's agreement.

35. In the event the respondent insists upon execution of any indemnity or undertaking that seeks to waive statutory rights of the complainants or



absolve the promoter from liabilities arising under the Act, the same would be unsustainable in law and unenforceable. However, customary declarations or undertakings, limited to confirming payment of dues or compliance with contractual obligations, cannot be termed per se illegal.

36. Accordingly, the respondent is directed not to compel the complainants to execute any indemnity or undertaking that has the effect of waiving their statutory rights or indemnifying the promoter against liabilities arising under the Act, as a precondition for execution of the conveyance deed.

**G.V Direct the respondent to get the conveyance deed executed in favour of complainants.**

37. The complainants have sought a direction to the respondent to execute the conveyance deed in their favour.
38. In this regard, it is pertinent to note that execution and registration of the conveyance deed is a statutory obligation of the promoter under Section 17 of the Real Estate (Regulation and Development) Act, 2016, upon receipt of the full consideration amount and fulfilment of contractual obligations by the allottee.
39. From the material available on record, it is observed that possession has already been offered after obtaining the occupation certificate and the complainants are liable to clear all outstanding dues, if any, as per the buyer's agreement. Therefore, subject to the complainants making payment of the due amount, if any, along with applicable stamp duty and registration charges, the respondent is bound to execute and register the conveyance deed in their favour within a reasonable period.
40. Accordingly, the respondent shall execute and get the conveyance deed registered in favour of the complainants within a period of 60 days from the date the date of this order, strictly in accordance with the provisions of the Act and the terms of the buyer's agreement.

**G.VI Direct the respondent not to charge maintenance before handing over of possession.**

41. The complainants have sought a direction restraining the respondent from levying maintenance charges prior to actual handing over of physical possession of the unit. It is a settled position that maintenance charges become payable only from the date the allottee is put in possession of the unit or from the date of a valid offer of possession after obtaining the occupation certificate, in terms of the buyer's agreement and the provisions of the Real Estate (Regulation and Development) Act, 2016.
42. In the present case, it is observed from the record that the occupation certificate was obtained and thereafter a valid offer of possession was issued to the complainants. Thus, the liability to pay maintenance charges would commence from the date of the valid offer of possession, and not for any period prior thereto. Accordingly, the respondent shall not to levy or recover maintenance charges for any period prior to the date of valid offer of possession. However, maintenance charges, as per the agreed terms, shall be payable from the date of offer of possession.

**G.VII Direct the respondent to refund the excess amount collected from the complainants along with offer of possession.**

43. The complainants have sought a direction to the respondent to refund the alleged excess amount collected at the time of issuance of the offer of possession.
44. The Authority has already examined the issue of delay and has granted delayed possession charges, as detailed in the preceding paragraphs of this order. The grant of delayed possession charges adequately compensates the complainants for the delay in handing over possession. In view of the above findings and in the absence of any cogent material on record establishing that any amount beyond the agreed terms of the buyer's agreement has been unlawfully recovered, no separate case for refund is made out. Accordingly, the present relief is devoid of merit and stands rejected.

**G.VIII Direct the respondent to set aside offer of possession cum demand letter on account of offer of possession.**

47. The complainants have sought a direction to set aside the offer of possession-cum-demand letter issued by the respondent. Upon consideration of the material available on record, it is observed that the occupation certificate had already been obtained and thereafter the offer of possession was issued in accordance with the terms and conditions of the buyer's agreement. The Authority has also adjudicated upon the aspect of delay and granted delayed possession charges, wherever found applicable, in the preceding paragraphs of this order.
48. In view of the fact that possession has already been validly offered after obtaining the requisite occupation certificate and the demands raised are in consonance with the agreed contractual terms, no ground is made out to set aside the offer of possession-cum-demand letter. Accordingly, the relief sought under this head is found to be untenable and is hereby rejected.

**G.IX Direct the respondent not to charge anything which is not part of the payment plan as agreed upon.**

49. The complainants have sought a direction restraining the respondent from levying or recovering any amount which does not form part of the agreed payment plan. It is observed that the financial obligations of the parties are governed by the terms and conditions of the buyer's agreement and the mutually agreed payment plan. The promoter is bound to raise demands strictly in accordance with the agreed terms and cannot unilaterally impose charges that are not contemplated therein or are otherwise contrary to the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules framed thereunder.
50. Accordingly, the respondent shall ensure that all demands are raised strictly in conformity with the agreed payment plan and contractual

stipulations. Any charge not forming part of the buyer's agreement shall not be recovered from the complainants.

**G.X Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.**

51. It is observed that the promoter is under a statutory obligation to complete the project in accordance with the sanctioned plans and specifications and to obtain the requisite occupation certificate prior to offering possession, in terms of the Real Estate (Regulation and Development) Act, 2016. Possession offered without completion of essential services and basic amenities, or without obtaining the occupation certificate, would be contrary to law.
52. In the present case, the record reflects that the occupation certificate has already been obtained and thereafter possession was offered to the complainants. In the absence of any cogent evidence demonstrating that the unit suffers from material deficiencies or that essential services are incomplete, the contention that the unit is incomplete cannot be sustained. Accordingly, the respondent shall ensure that the unit is handed over strictly in accordance with the sanctioned plans, specifications, and terms of the buyer's agreement, along with provision of essential services and amenities. However, no ground is made out to withhold possession on vague or unsubstantiated allegations, and the relief sought is disposed of in the above terms.

**G.XI Direct the respondent to provide the exact layout plan of the said unit.**

53. Under the provisions of Section 11 of the Real Estate (Regulation and Development) Act, 2016, the promoter is obligated to make available to the allottees all relevant documents and information pertaining to the project, including sanctioned plans and layout plans. Transparency in disclosure forms a core mandate of the Act. In case the detailed layout

plan of the unit, as sanctioned by the competent authority and forming part of the approved building plans, has not been supplied to the complainants, the respondent is duty-bound to provide the same.

54. Accordingly, the respondent is directed to furnish to the complainants a copy of the sanctioned layout plan of the unit, as approved by the competent authority, within a period of 30 days from the date of this order. If the same has already been provided, this relief shall stand satisfied.

**H. Directions of the Authority:**

55. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of interest i.e. 10.80% p.a. for from the due date of possession i.e., 01.12.2017 till the date of offer of possession i.e., 23.07.2019 plus two months or actual handing over of possession whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 23.07.2019 till the date of order by the authority shall be paid by the respondent/promoter to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent is directed to hand over possession of the subject unit to the complainant/allottees, upon payment of outstanding dues, if any, after obtaining the occupancy certificate.
  - v. The respondent is directed to execute the conveyance deed registered in favour of the complainants within 90 days as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.
  - vi. The respondent is directed to not to levy, demand, or recover any amount from the complainant which is not expressly stipulated in the builder buyer agreement.
  - vii. The respondent is directed to not to levy or recover maintenance charges for any period prior to the date of offer of possession.
  - viii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
56. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
57. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
58. Files be consigned to the registry.

  
(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority,  
Gurugram

Dated: 05.02.2026