

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

Complaint no.: 4863 of 2024
Date of decision: 14.11.2025

Vandana Kumari and Pankaj Kumar
R/o: H.No A 22 23, Flat no 3 Indira Enclave
near IGNOU Neb Sarai, South Delhi

Complainants

Versus

Chirag Buildtech Private Limited
Regd. Office at: Building No. 80, Sector 44,
Gurugram 122003

Respondent

CORAM:

Shri Arun Kumar

Member

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)
Sh. Garvit Gupta (Advocate)

**Complainants
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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	"ROF Ananda", sector-95, Gurugram
2.	Nature of the project	Residential Colony (Affordable Group Housing Colony)
3.	Area of the project	5.043 acres
4.	DTCP License	17 of 2016 dated 25.10.2016
	valid upto	28.02.2025
5.	RERA registered/ not registered	Registered 184 of 2017 dated 14.09.2017 valid upto 13.09.2021
6.	Unit no.	701, Tower B, 7 TH FLOOR
7.	Unit area	644.12 sq. ft. (carpet area) 100 sq. ft. (balcony area)
8.	Date of execution of builder buyer's agreement	16.03.2018 [Page 29 of complaint]
9.	Date of allotment letter	16.03.2018 (page 25 of complaint)
10.	Possession clause as per BBA	3.1 Unless a longer period is permitted by the DGTCP or in the Policy and subject to the force majeure circumstances as stated in Clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Apartment Buyer(s) of all his/her/their obligations, formalities and



		documentation as prescribed by the Developer from time to time and not being in default under any part of this Agreement, including but not limited to timely payment of instalments of the Total Cost and other charges as per the Payment Plan, stamp duty and registration charges, the Developer proposes to offer possession of the Said Apartment to the Apartment Buyer(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later. The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/concerned State Legislative Body. [Page 35 of complaint]
11.	Date of building plans	07.12.2016 09.10.2017(EC)
12.	Due date of possession	09.10.2021 + 6 MONTHS (COVID)
13.	Total sale consideration	Rs. 26,26,480/- [as per BBA on Page 33 of complaint]
14.	Total amount paid by the complainant	Rs. 30,94,581 /- [as per payment receipts on Page 72-81 of complaint]
15.	Demand letters for installment	14.12.2023, 13.01.2024 (page 93 of complaint)
16.	E-Mail for cancellation of unit	24.09.2024 (page 94 of complaint)
17.	Cancellation letter	22.07.2024 (page 4 of application)
18.	Publication in newspaper	11.09.2024

		(page 7 of application)
19.	Amount paid back to complainant on cancellation	Rs.27,46,446/- (dated 10.09.2024) (page 96 of complaint)
20.	Occupation certificate	22.02.2022 (as per DTCP license)
21.	Offer of possession	N/A

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. That the complainants Vandana Kumari and Pankaj Kumar are law-abiding and peace-loving citizens and are residents of A-16, Indira 2nd Floor Enclave near IGNOU, Neb Sarai, South Delhi, Delhi-10068.
- ii. That the respondent party Chirag Buildtec Private Limited is a company incorporated under the Companies Act, 1956 having a registered office at # M-18, 3rd Floor, Greater Kailash-II (market), South Delhi, Delhi-110048, and the project in question is known as "ROF Ananda" situated in Sector-95, Gurugram.
- iii. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act. The respondent is under the territorial jurisdiction of this Hon'ble Regulatory Authority.
- iv. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainants fall under the category of "Allottees" and have rights and obligations under the Act.

- v. That in February 2018, complainant/petitioner, Pankaj Kumar received a marketing call from the office of the respondent for booking a residential plot in the proposed project ROF Ananda, and the caller represented himself as a manager of the respondent company and marketed the project situated at Sector - 95, Gurgaon. The said caller offered a residential unit. The complainants visited the office of the respondent party and the project site of the respondent/builder, and there the complainants met with the marketing staff and office bearers of the respondent company and got information about the project. The marketing staff of the respondent party allured the complainants by elaborating all the specifications of the said project and assured of timely delivery of the unit.
- vi. That believing in the representation and assurance of the respondent, the complainants applied for the booking of a residential unit in the above-said project of the respondent vide application no. 5558 dated 01.03.2018 under affordable Group Housing Policy, 2013.
- vii. That on 16.03.2018, a unit bearing No. 701 on the 7th Floor of Tower-B admeasuring 644.12 sq. ft area along with a balcony area of 100 sq. ft situated in the project "ROF Ananda" of the respondent was allotted to the complainants vide allotment letter dated 16.03.2018. A two-wheeler parking bearing no. B53 was also allotted to the complainants against the allotment of the said unit. It is relevant to note here that the said unit was booked and allotted for a total sale consideration of Rs. 26,26,480/- under the time-linked payment plan.
- viii. Thereafter on 16.03.2018, a pre-printed, unilateral, one-sided, arbitrary, and ex-facie builder buyer's agreement was executed inter-se the respondent/promoter and the complainants/allottees. It is pertinent to

mention here that as per the possession clause of the said BBA i.e., clause 3.1, the respondent/builder has to give possession of the complainants' unit within 4 years from the date of sanction of the building plan or environment clearance, whichever is later. The building plans for the respondent's project were sanctioned on 07.12.2016, therefore, the due date of possession was 07.12.2020.

- ix. That the complainants have availed a home loan from Indiabulls for the payment of instalments of the unit allotted to them. It is pertinent to mention here that at first, the complainant has availed a home loan of Rs. 25,00,000/-, thereafter, a separate loan of Rs. 6,56,000/- was also availed by the complainants in October 2021. The concerned financial institution i.e., Indiabulls has disbursed the said loan amount to the builder/respondent.
- x. Thereafter, the complainants continued to make the payments against the instalments of their unit following the payment plan opted by them and against the demands raised by the respondent party. It is pertinent to mention here that as per the payment receipts issued by the respondent, the complainants have paid a substantial sum of Rs. 31,97,921/- against their unit which is more than 100% of the total consideration.
- xi. It is important to note here that the respondent party reduced the area of the complainants' unit from 644.12 sq. ft to 635.97 sq. ft without any information and justification as reflected in the payment receipts issued by the respondent.
- xii. That the complainants have been persistently following up with the respondent party regarding the possession of their unit, despite having made 100% payment. However, the respondent/builder has failed to

hand over possession. Notably, complainant Pankaj Kumar repeatedly requested the respondent party to provide a statement of account for the unit and an update on possession. Unfortunately, these requests were consistently met with silence.

- xiii. That on 13.12.2023, the complainant sent an email, reiterating the request for a unit ledger and a demand letter, should any amount be outstanding. The complainants reaffirmed their willingness to settle any pending charges, having already paid more than 100% of the consideration. Regrettably, the respondent party disregarded these requests. Subsequently, the parties exchanged multiple emails on various occasions, but unfortunately, no meaningful resolution was achieved. It is germane to highlight here that the respondent party sent a demand letter via email dated 14.12.2023, but the said demand letter contains unreasonable charges on account of interest. It is relevant to note here that the complainants have already paid more than 100% amount and the same can be seen from the demand letter dated 31.01.2024 issued by the respondent, therefore, no interest on payments whatsoever is pending on the complainants' part. The complainants promptly expressed their concerns about these unjust demands via email on the same day. The respondent subsequently issued an opportunity letter with demands for holding charges, which the complainants also deemed unacceptable. In response, Pankaj Kumar sent a grievance email on 21.12.2023, but it yielded no resolution. Following this, numerous emails were exchanged after 21.12.2023, regarding the respondent's demands, which were unclear and unjustified.
- xiv. The respondent party did not provide any justification for the demands raised by them on account of holding charges and interest. Furthermore,

on 23.07.2024, the respondent party issued a unilateral and arbitrary unit cancellation letter to the complainant via email thereby terminating the complainants' unit without prior notice or valid justification. In response to the said email, the complainant sent an email on 25.07.2024 and showed his willingness to pay a visit to the office of the respondent, however, the official staff of the respondent staff claimed that they off on 27.07.2024, therefore, the complainant visited the office of the respondent on 27.08.2024 still he did not receive any response from the respondent's office bearers regarding the registration and possession process for the complainants' unit. Additionally, the complainant also sent an email on the same day (27.08.2024) to the respondent reiterating his all concerns and grievances.

- xv. It is pertinent to mention here that the demand letter dated 14.12.2023 contains an illegal demand of Rs. 51,513 on account of EEC/Meter Charges, Rs. 1188/- RWA fees, Rs. 9539.55/- BOCW Cess, Rs. 61,922.30/- Holding Charges from May 2022 to May 2023 and Rs. 33,340/- from June 2023 to Dec. 2023. And interest of Rs. 80,395/- without any justification. It is further pertinent to mention here that the complainant already paid most demand under protest except interest and holding charges amounting to Rs. 1,20,166.20/-.
- xvi. The respondent party, despite receiving full payment from the complainants, persisted in making unjust demands for holding charges and interest. Under duress to avoid unit cancellation, the complainants paid Rs. 70,000/- on 10.01.2024, and Rs. 33,340/- on 16.01.2024, via NEFT, but the respondent failed to provide payment receipts for these transactions. The reasoning behind this omission is unclear. Despite receiving full payment, the respondent has failed to deliver possession of

the complainants' unit. Consequently, any demand for holding charges by the respondent party is unjustified and without legal basis.

- xvii. On August 27, 2024, the respondent sent an email to the complainant, fabricating a story that included a false claim of sending an offer of possession on 28.02.2022. However, the respondent never actually issued this offer, as evidenced by the lack of mention in prior emails exchanged between the parties before 27.08.2024. Furthermore, the respondent failed to bring up the alleged offer of possession during the personal meeting on 27.08.2024. It is crucial to note here that the respondent party cancelled the unit of the complainants on account of non-payment of demands specified in the alleged offer of possession dated 28.02.2022, which was never actually issued. Furthermore, the after issuance of the alleged offer of possession dated 28.02.2022, the respondent party issued numerous demand letters, and multiple emails were exchanged between the parties, however, the respondent party conspicuously failed to mention about this two-year-old offer in any of its emails prior to the unit cancellation. The respondent party's actions demonstrate a malicious intent to unjustly appropriate the complainants' hard-earned funds. On September 10, 2024, the respondent's action of sending a cancellation letter to Vandana Kumari along with a cheque of Rs. 27,46,446/-, raises suspicions of malafide intention, especially since they have reportedly retained all the deposits made by the complainants. This move of the respondent appears to be an attempt to unjustly appropriate the complainants' funds.
- xviii. That the respondent party sent the cancelation letter without following the due process of law since the respondent party did not send any pre-cancelation notice against the booking of the complainants' unit. It is

pertinent to mention here that after receiving the said cancelation letter, the complainants managed to communicate with the respondent party and raised their grievances against the said cancelation letter, but all went in vain.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. To get an order in their favour by restraining the respondent party from giving effect to the said cancellation letter dated 10.09.2024 and a direction for setting aside the said cancelation letter.
 - ii. To get an order in their favour by restraining the respondent party from creating third-party rights in the unit of the complainants
 - iii. To get physical possession of the fully developed unit with all amenities.
 - iv. To get the delayed possession interest @ prescribed rate from the due date of possession i.e. 17.12.2020 as per BBA till the actual date of possession.
 - v. To get an order in their favour by directing the respondent party to execute the conveyance deed of the unit.
 - vi. To get an order in their favour by directing the respondent party to refund EEC/Meter Charges, RWA Fee, BOCW Cess, and Holding Charges paid by the complainants.
 - vii. To get an order in their favour by restraining the respondent party from charges on account of holding charges and interest.

D. Reply by the respondent

5. The respondent has made the following submissions in the reply:
 - i. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered prestigious projects and in most of these projects

- large numbers of families have already shifted after having taken possession.
- ii. That it is submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that his calculations went wrong on account of severe slump in the real estate market and the complainant now wants to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainant cannot be allowed to succeed.
 - iii. That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhoraka, Sector 95, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Ananda' from the Director Town and Country Planning, Haryana, Chandigarh vide approval bearing license no. 17 of 2016 dated 25.10.2016 under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976 read with the Affordable Group Housing Policy, 2013 issued by the Government of Haryana vide the Town and Country Planning Department notification dated 19.08.2013 as amended from time to time.
 - iv. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing Memo no. ZP-1133/SD(BS)/2016/26738 dated 07.12.2016 and the environment clearance bearing no. SEIAA/HR/2017/659 dated 09.10.2017 from the State Environment Assessment Authority, Haryana for the project in question. Moreover, the respondent in compliance of all laws including Real Estate (Regulation and Development) Act, 2016 has registered the project in question with this Hon'ble Authority and this Hon'ble Authority after scrutiny of all the

- relevant documents and completing its own due diligence has issued a registration certificate bearing no. 184 of 2017.
- v. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide his booking application form. The complainant agreed to be bound by the terms and conditions of booking application form. The complainant was aware and had admitted and accepted vide the said booking application form that he by the way of said application form had applied in the said project under the Affordable Group Housing colony being developed by the respondent under the Affordable scheme policy and had understood all the limitations and obligations after being provided with all the information and clarifications. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said policy and only after being completely satisfied about the same, had made the booking with the respondent. The complainant at the time of submitting the booking application form had made the payment towards 5% amount of the total cost of the unit as per the Affordable Scheme Policy, 2013.
- vi. That the first draw was conducted on 23.08.2017 and the unit was allotted to the complainant via intimation letter dated 24.08.2017. The complainant was allotted an apartment no. B-206 having carpet area of 645.29 square feet and balcony area of 86.20 sq. ft.
- vii. That the respondent vide the said letter dated 24.08.2017 which was equivalent to an allotment letter being issued demanded the next 25% payment demand with an additional demand of 12.5% the total cost of the flat strictly as per clause 5(iii)(b) and clause 5(iii)(k) of the said policy.

- viii. That the respondent raised the payment demands as per the payment plan and as per the Affordable Housing Policy, 2013 as and when the said payments became due. The complainant has been a regular defaulter and had delayed the payments and the respondent had to remind the complainant time and again through several modes to make the said payments. The respondent vide email dated 07.01.2021 reminded the complainant that an amount of Rs 5,77,681/- has been due and the respondent had sent several other reminders prior to the said email reminding the complainant of the said due payment.
- ix. That the respondent strictly as per the terms of the allotment and policy, on 04.02.2021 sent a demand letter to the complainant wherein a net payable amount of Rs. 9,15,262/- were to be paid by the complainant till 23.02.2021. The complainant miserably failed to deposit the said amount and clear out the dues within time. The respondent on the lapse of due date to remit the dues reminded the complainant to make the said payment vide mail dated 08.03.2021. Further vide mail dated 19.04.2021, the respondent again reminded the complainant to remit the dues at the earliest. It is pertinent to mention here that the respondent vide the said email also intimated the complainant that the interest is charging on the delay payment.
- x. That the complainant despite several efforts of the respondent to reach out to him and after several reminders failed to remit the dues. The respondent despite the failed efforts, again reminded the complainant to make the payments as per the demand letters and accordingly issued a reminder letter dated 06.05.2021 further reminding the complainant that a payment of Rs 11,73,061/- is yet to be made by the complainant. It is pertinent to mention here that yet again the effort of the respondent went

in vain as the complainant failed to pay any heed to the payment demands raised by the respondent strictly as per the payment plan and the Affordable Housing Policy, 2013.

- xi. That the respondent vide demand letter dated 20.05.2021 raised the payment demand of Rs 11,78,326/- which has been due since 23.02.2021 and the complainant had failed to remit the said due payment. The respondent was constrained to send an email dated 20.05.2021 and to further remind the complainant that a payment demand has been due and despite numerous reminders the same has not been paid by them. It is pertinent to mention here that the respondent had through several mails as already attached prior to the present mail and through several telephonic calls has reminded the complainant of the due payment but to no avail. Moreover, despite the present mail and demand letter, the complainant did not pay the aforesaid dues.
- xii. That the respondent despite the failed efforts to get the payment demands paid by the complainant continued to send the reminders and accordingly, a demand letter dated 05.07.2021 was sent by the respondent demanding the unpaid dues of Rs 11,95,627/- which the complainant had miserably failed to remit. The respondent subsequently sent another reminder letter dated 05.07.2021 intimating the complainant of the due payment of the aforesaid amount. It is pertinent to mention here that the complainant despite the numerous reminder letters did not even come forward or replied to any of the mails sent by the respondent. The respondent in the best interest of the complainant reminded the complainant of the dues and the reminder vide email dated 05.07.2021.
- xiii. That on the basis of the application, an agreement was sent by the respondent to the complainant. The complainant signed the agreement



- only after being fully aware of all the limitations and obligations and after being completely satisfied with the terms and conditions of the said agreement. The complainant at the time of execution of the said agreement categorically assured the respondent that the payment dues would be paid by the complainant on time and there would be no further defaults by the complainant. The respondent after being assured by the said promise executed the said agreement.
- xiv. That vide reminder letter dated 11.02.2022 and vide email dated 11.02.2022, the respondent had yet again, reminded the complainant of the previous dues of Rs 12,78,755/-. However, the complainant in continuation of his defaults failed to remit the said demand.
- xv. That the respondent completed the construction of the tower in which the unit allotted to the complainant was located and obtained the occupation certificate well within the time period. The complainant was required to make complete payment towards the due amount as well as to complete the documentation formalities before the possession could be offered to the complainant.
- xvi. That the complainant failed to remit the due amount and the respondent was once again constrained to issue the final opportunity letter dated 20.10.2022 and mail dated 20.10.2022 to the complainant demanding the due amount.
- xvii. The complainant was aware that as per clauses 1.4 and 2.2 and 5.1 of the agreement, timely payment of the instalment amount was the essence of the allotment. It was understood vide clause 1.13 of the agreement and as per clause 5(iii)(i) of the affordable scheme policy, 2013, that if the allottee fails to make the payment towards the demanded amount, then the respondent would be entitled to terminate the allotment by issuing the

cancellation letter. On account of defaults committed by the complainant, the respondent was left with no other choice but to terminate the allotment of the complainant by issuing the cancellation letter dated 18.11.2022 with the full and final settlement of the account against the unit no. B-206 and accordingly requested the complainant to visit the office of the respondent and collect the balance dues, if any. Therefore, the complainant is now left with no right, title or lien in the unit after the said cancellation. The said cancellation has been done by the respondent strictly as per the agreement and the said policy and the same is valid in the eyes of law. Furthermore, the respondent has already created third party rights over the said unit by allotting it to a third party on 13.07.2023. The said reallocation has been done after following the due process of law including newspaper publications.

- xviii. That the cancellation of the allotment has been done not only in accordance with the provisions of the agreement but also as per the law laid down in Real Estate (Regulation and Development) Act, 2016 and the Affordable Housing Scheme Policy, 2013 notified by State government of Haryana. In the present case, the agreement of sale is as per the agreement which was submitted by the complainant at the time of registration of the project with this Hon'ble Authority. Therefore, the said act of cancellation of the allotment has been done keeping in mind the legality and provisions of the Real Estate (Regulation and Development) Act, 2016. Thus, the cancellation done by the complainant is as per law and is to upheld by this Hon'ble Authority. No illegality of any nature whatsoever has been committed by the complainant in doing so.

- xix. That moreover, it is pertinent to mention herein that the respondent has throughout acted strictly as per the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities.
- xx. It is thus, a classic case of an allottee claiming premium of his own defaults, laches and wrongs and the respondent cannot be made to suffer on account of the same. The complainant is a real estate investor who had made the booking with the complainant in order to make profit in a short span of time. However, on account of slump in the real estate market, his calculations went wrong and he was not possessed with sufficient funds to honour his commitments. On account of delay and default on the part of complainant, it is the respondent who has been made to suffer. The complainant and such like investors cannot be allowed to play with the future and interest of other genuine allottees who have invested their life-savings with the respondent.
- xxi. That although, moreover, it is pertinent to mention herein that the respondent has throughout acted strictly as per the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities.

E. Jurisdiction of the Authority:

6. 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

7. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on relief sought by the complainants:

- F.I To get an order in their favour by restraining the respondent party from giving effect to the said cancellation letter dated 10.09.2024 and a direction for setting aside the said cancelation letter.**
- F.II To get an order in their favour by restraining the respondent party from creating third-party rights in the unit of the complainants**
- F.III To get physical possession of the fully developed unit with all amenities.**
- F.IV To get the delayed possession interest @ prescribed rate from the due date of possession i.e. 17.12.2020 as per BBA till the actual date of possession.**
- F.V To get an order in their favour by directing the respondent party to execute the conveyance deed of the unit.**

F.VI To get an order in their favour by directing the respondent party to refund EEC/Meter Charges, RWA Fee, BOCW Cess, and Holding Charges paid by the complainants.

F.VII To get an order in their favour by restraining the respondent party from charges on account of holding charges and interest.

10. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

11. In the present complaint, the complainants intend to continue with the project and is seeking possession of the unit as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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)

12. Clause 3.1 of the builder buyer agreement provides the time period of handing over possession and the same is reproduced below:

"3.1. POSSESSION

3.1 Unless a longer period is permitted by the DGTCP or in the Policy and subject to the force majeure circumstances as stated in Clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Apartment Buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the Developer from time to time and not being in default under any part of this Agreement, including but not limited to timely payment of instalments of the Total Cost and other charges as per the

Payment Plan, stamp duty and registration charges, the Developer proposes to offer possession of the Said Apartment to the Apartment Buyer(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later. The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/concerned State Legislative Body.

[Emphasis supplied]

13. The complainants booked a unit in the affordable group housing colony project of the respondent known as "ROF Ananda" Sector-95, Gurugram, Haryana and was allotted a unit bearing no. 701, on 7th floor in tower-B of the project vide buyers agreement dated 16.03.2018 for a total sale consideration of Rs.26,26,480/- out of which the complainants had paid an amount of Rs.30,94,581/-, which is more than the total sale consideration, towards the subject unit.
14. The respondent raised demand letters dated 14.12.2023 and 13.01.2024 towards alleged outstanding dues and thereafter proceeded to cancel the unit vide letter dated 22.07.2024 followed by email dated 24.09.2024 and publication in newspaper dated 11.09.2024.
15. In line with the aforesaid facts, the documents and submissions placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
16. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication

of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs.25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

17. However, In the present case, it is observed that the respondent has proceeded to cancel the unit despite the complainants having paid more than 100% of the total sale consideration. The respondent has failed to justify the demands raised at a belated stage, particularly when the project had already reached the stage of completion and occupation certificate had been obtained on 22.02.2022. It is further observed that no valid offer of possession has been placed on record by the respondent.
18. The authority is of the considered view that the respondent /builder has not followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 22.07.2024 is held to be invalid. The respondent is directed to reinstate the allotted unit of the complainants as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainants within a period of 60 days from the date of this order.
19. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainants is seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

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.

20. 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.
21. 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., 14.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
22. 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—
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;"*
23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter

which is the same as is being granted to the complainant in case of delayed possession charges.

24. 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 possession clause the possession of the unit was to be offered within 4 years from the date of approval of building plans (07.12.2016) or from the date of environment clearance (09.10.2017), whichever is later. The environmental clearance was received later i.e., 09.10.2017, so it will be taken into account and 4 years will be calculated from 09.10.2017 which comes out to be 09.10.2021. Further, a period of 6 months will also be added to this as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Therefore, the due date comes out be 09.04.2022. The respondent obtained the Occupation Certificate from the competent authority on 22.02.2022, however, no valid offer of possession has been placed on record. In absence of a valid offer of possession, the delay continues and the respondent cannot escape liability under Section 18(1) of the Act.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.04.2022 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate

i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority:

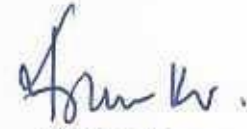
26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The cancellation letter dated 22.07.2024 is hereby set aside. The respondent is directed to re instate the allotted unit of the complainants as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainants within a period of 60 days from the date of this order.
- ii. The respondent is directed to pay delay possession charges to the complainants at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 09.04.2022 till the offer of possession plus two months or actual handing over of possession, whichever is earlier.
- iii. The respondent is directed to hand over the possession of the allotted unit to the complainants complete in all respects as per specifications of the builder buyer agreement within a period of one month from the date of this order.
- iv. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order upon payment of stamp duty and registration charges as per applicable norms.
- v. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement and the Affordable Housing Policy, 2013.

vi. 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.

27. Complaint stands disposed of.
28. File be consigned to registry.

Dated: 14.11.2025



(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM