

## BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint received on : 29.05.2024  
Order pronounced on : 23.12.2025

**Harish Kumar Agarwal**

R/o: -65, South City-2, Sector 50, Gurugram  
- 122018, Haryana

**Complainant**

### **Versus**

**1. M/s Ansal Housing Limited** (formerly known as M/s Ansal Housing & Constructions Ltd.)

**Regd. office:** 606, 6<sup>th</sup> Floor, Indra Prakash, 21,  
Barakhamba Road, New Delhi – 110001

**2. M/s Identity Buildtech Pvt. Ltd**

**Regd. office:** 110, Indra Prakash, 21,  
Barakhamba Road, New Delhi – 110001

**Respondents**

### **CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman**  
**Member**

### **APPEARANCE:**

Shri Vishesh Garg (Advocate)  
Shri Aamandeep Kadyan (Advocate)

**Complainant**  
**Respondents**

### **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 provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se* them.

**A. Unit and Project-related details:**

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

| S. N. | Particulars                  | Details  |
|-------|------------------------------|--|
| 1.    | Name of the project          | Ansal Highland Park  |
| 2.    | Project location             | Sector 103, Gurugram   |
| 3.    | Nature of Project            | Group Housing Colony   |
| 4.    | RERA registration            | 16 of 2019 dated 01.04.2019<br>Project Lapsed  |
| 5.    | Application for allotment    | 05.09.2012<br>[As stated by the complainant at page no. 21 of the complaint]   |
| 6.    | Date of buyer's agreement    | 21.03.2013<br>[Page 28 of complaint]   |
| 7.    | Unit No.                     | ENDBG-705<br>[Page 31 of complaint]  |
| 8.    | Unit Area                    | 1940 sq. ft.<br>[Page no. 31 of the complaint]   |
| 9.    | Possession clause            | <b><i>31. The Developer shall offer possession of the Unit any time, within a period of 48 months from the date of execution of Agreement or within 48 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 48 months as above in offering the possession of the Unit.</i></b><br>[Page no. 39 of complaint] |
| 10.   | Commencement of Construction | 16.04.2013<br>[Taken from another case of same project]  |
| 11.   | Due date of possession       | 21.09.2017   |

|     |                                |  |
|-----|--------------------------------|--|
|     |                                | (Calculated from commencement of construction being later + 6 months of grace period is allowed unconditionally) |
| 12. | Total sale consideration       | Rs.1,00,86,913/-<br>[Page no. 45 of complaint]   |
| 13. | Amount paid by the complainant | Rs. 76,35,975/-<br>[As per receipts at page 50-71 of complaint]  |
| 14. | Occupation certificate         | Not Obtained   |
| 15. | Offer of possession            | Not Offered  |

**B. Facts of the complaint:**

3. The complainant has made the following submissions:

- The respondent no.1 launched a project namely 'Ansals Highland Park' in Sector 103, Dwarka Expressway, Gurugram - 122006, Haryana (hereinafter referred to as 'the project') approved by Director General Town & Country Planning, Chandigarh, Haryana (DGTCP) has granted license, *vide* license number 32 of 2012 to the Ansal Housing Limited (formerly known as Ansal Housing & Constructions Ltd.) for setting up of a Residential Group Housing Colony on a land area of about 93 Kanal 12 Marla i.e., 11.7 acres situated in Vill. Tikampur, Gurugram Manesar Urban Development Plan in Sector 103, Gurugram.
- The complainant applied for a provisional allotment of a unit in the above mentioned project on 05.09.2012 and was subsequently allotted a unit for which an apartment buyer's agreement (hereinafter referred to as 'ABA') dated 21.03.2013 was executed between the complainant and M/s Ansals Housing & Constructions Ltd. (now known as Ansal Housing Limited), i.e., respondent no.1, wherein the complainant was allotted a unit bearing No.EDNBG-705, 3BHK + Utility with two covered car parking spaces (hereinafter referred to as the 'unit in question') having sale area of 1940 sq. ft. at the rate of Rs.4759/28 per sq. ft. and sale area of 180.23 sq. mt. at

the rate of Rs.51,228/89 per sq. mt. and the total sale consideration of the unit in question was Rs.93,13,513/- including basic price, PLC and parking charges and excluding EDC/IDC, escalation, club membership fees, etc.

- c. The Complainant had already paid a total amount of Rs.76,35,975/- including basic, EDC, IDC, various charges, interest and TDS to the respondent no.1 under construction linked plan against receipts of cheques and TDS certificates,
- d. As per clause no. 31 of the ABA dt.21.03.2013, it was agreed between the parties that the possession of the Unit in question would be delivered within 48 months, with a grace period of 6 months from the date of execution of the agreement or the date of obtaining all the required sanctions and approvals necessary for the commencement of construction, whichever is later. However, the respondents have failed to offer possession of the unit in question to the Complainant within the stipulated period, as committed.
- e. The ABA was executed on 21.03.2013, and the respondent no.1 had admitted vide its email dated 04.11.2016 that the construction work of the project commenced in May 2013 and that the Respondent no.1 is planning to offer the possession by the end of 2017 or first quarter of 2018. Therefore, the possession of the unit in question was to be delivered by the respondent no.1 to the complainant by November 2017, i.e., 48 months along with a 6-month grace period from May 2013.
- f. The complainant constantly tried to seek updates regarding the construction progress of the project through emails dt.03.11.2016, 08.11.2016, 12.09.2016 and 19.09.2016, however, the respondent no.1 didn't provide any updates regarding the completion of the said project. In response to the complainant's inquiry, the respondent no.1 replied via

email dt.31.03.2018, and mentioned that only the flooring work had been completed for Kinross, Obaan, Abden, and Perth towers, and no information regarding the 'Edenburg' tower, where the complainant's unit is situated. Respondent no.1 dt. 31.03.2018, wherein they acknowledged the fact that the construction is egregiously delayed, is way past the due date on which the delivery of possession was supposed to be given i.e. on November 2017 as per the ABA.

- g. The complainant inquired about the irregularities in the project, as well as the registration and renewal of the project's license, via emails dt.30.08.2018 and 12.09.2018, however, no reply was received by him from respondent no.1. The respondents have been making illegal demands and threatening buyers and putting undue influence and pressure on various allottees including the complainant with interest on delayed payments, inspite of the fact that they are liable to compensate buyers for the delay in possession as per the provisions of HRERA because of the abnormal delay in the project. The complainant had also requested a copy of the minutes of the meeting held between a group of buyers and Mr. Karun Ansal, President (project), on 01.09.2018, which has not been provided to the buyers, yet, by Mr. Ashok Kumar, EA to Director, as promised during the meeting. The respondents had not paid any heed to the requests of various allottees including the complainant and have never updated the buyers regarding the same.
- h. The complainant apprehends that the Respondents have already diverted the amount paid by the Home Buyers towards the 'Ansals Highland Park' project to its other projects / businesses. The complainant also apprehends that the total amount paid by the home buyers to the respondents is a lot more than the total amount invested in the project which means that a huge balance should still be lying with the

respondents. It is evident from the status of the project that the respondents might have siphoned off the said funds for personal use or for use in its other projects / businesses since it has not been invested in the project in question.

- i. Respondent no.1, i.e., Ansal Housing and Constructions Ltd., intimated the complainant vide its letter dt. 26.04.2019 that the balance project shall be executed by respondent no.2, i.e., M/s Identity Buildtech Pvt. Ltd., and that all the pending payments will be made in the name of M/s Identity Buildtech Pvt. Ltd. Section 15 of the RERA Act, 2016 explicitly prohibits promoters from transferring or assigning their majority rights and liabilities concerning a real estate project to a third party without obtaining prior written consent from two-thirds of the allottees and a prior written approval of the regulatory authority. Therefore, the transfer of promoter rights from respondent no.1, i.e., M/s Ansal Housing & Constructions Ltd. to respondent no.2, i.e., M/s Identity Buildtech Pvt. Ltd. without obtaining the consent of the allottees is contrary to the provisions of the RERA Act, 2016.
- j. The complainant vide his letter dt. 22.06.2019 to respondent no.1, objected the arbitrary transfer of rights to M/s Identity Buildtech Pvt. Ltd. Furthermore, the complainant raised a concern that he was receiving demand notices constantly without getting any update regarding the status of the project which the respondent no.1 had promised to give possession of, in the year 2017 itself.
- k. due to non-delivery of possession of the flats, the buyer's association, namely, 'Ansals Highland Park Resident Welfare Association' (AHPRA) which is a body registered with the Haryana Registration and Regulations of Societies Act, 2012, vide registration No. 03483 of 2018, filed a complaint with the HRERA authority, addressing the grievances of buyers

in a unified manner vide Compliant No.1144 of 2019 titled 'Ansals Highland Park Resident Welfare Association vs. M/s Ansal Housing Limited', and the complainant was a member of the said association at the time of filing of the said compliant.

- I. The Hon'ble HRERA Authority, vide its order dt.18.07.2019, acknowledged that the Respondents, i.e., M/s Ansal Housing Limited & M/s Identity Buildtech have failed to deliver possession of the aforementioned project despite receiving 95% of the payments from the respective allottees. According to the documents on record, the percentage of completion of work was zero as on 18.07.2019. In light of the same, the Hon'ble HRERA Authority appointed a team of local commissioners to conduct an onsite inspection and ascertain the status of the construction of the project. Furthermore, the Hon'ble HRERA Authority held that the Respondents were liable to pay delayed possession charges (DPC) in the form of prescribed rate of interest @ 10.60% per annum from the due date of delivery of possession as mentioned in the ABA as per the provisions of Section 18(1) of the RERA Act, 2016 until the offer of possession. Additionally, it was directed that the delayed period would be calculated from the date of execution of BBA i.e. 48 months + 6 months' grace period in each respective case of the complainants. The local commissioner appointed, conducted an onsite inspection, on 05.08.2019 and submitted its report wherein it was stated that till date, only 30% to 40% work has been done by the respondent.
- m. A demand reminder letter dt.18.07.2019 was raised by respondent no.2 to which the complainant responded, vide his letter dt.02.09.2019, that he is not liable to pay any amount to respondent no.2 since the ABA was executed with respondent no.1 and he also mentioned that according to the ABA, the complainant was bound to make payments according to the

construction linked payment plan and that during the site visits, the status of the project is nowhere near the milestone of construction for which the demand has been raised and therefore, the complainant was not liable to clear the said demand and no interest of any kind was payable by the complainant to respondent no.2. That the complainant also raised a demand of Rs.15,09,264/- on the account of delayed possession compensation till 31.08.2019, as per the order of the Hon'ble HRERA Authority dt.18.07.2019.

- n. The Hon'ble HRERA Authority, taking the inspection report dt.05.08.2019 into account, directed the respondent that they would incur Delayed possession charges to the buyer at a rate of 10.60% per annum from the due date of delivery of possession and the delay period shall be counted from the date of execution of builder buyer agreement + 48 months + 6 months' grace period in each case.
- o. the respondent no.1, in response to the letter dt.02.09.2019 of the complainant, vide its letter dt.12.09.2019, denied the contents of the letter of the complainant and informed that they have filed an appeal against the order of the Hon'ble HRERA Authority dt.18.07.2019 and that the said appeal was pending before the Hon'ble HRERA Appellate Tribunal. It was mentioned in the said letter that in view of this, no cause of action arose to the complainant to seek delayed possession compensation as per the order of the Hon'ble HRERA Authority dt.18.07.2019. In addition to this, the Respondent again asked for the outstanding dues from the complainant without informing the status of the project.
- p. The complainant, vide his letter dt.18.10.2019, replied to the respondent, rejecting its contention that no cause of action arose to the complainant to claim delayed possession compensation on the account of the appeal pending before the Hon'ble HRERA Appellate Tribunal since the said

appeal was dismissed as withdrawn vide order dt.04.10.2019 due to failure in complying with the condition of pre-deposit imposed by the Hon'ble HRERA Appellate Tribunal. Furthermore, the complainant reiterated that no further payments would be made from his side because a substantial amount of delayed possession compensation (DPC) was pending to be paid by the respondent.

- q. The complainant, subsequently, sent another letter dt.14.01.2020 denying the demand letter dt.13.12.2019 and demanded delayed possession compensation of Rs.17,68,603/- till 31.12.2019 in the said letter.
- r. Respondent no.1 had approached various home buyers for settlement agreement which stated that in order to take the financial assistance of Sawamih Fund provided by the Central Government to complete the project, it was mandatory for them to settle the present dispute. Thus, a letter dt.18.06.2020 was received by the complainant from the respondent intimating the same, along with a proforma of consent letter for endorsing his no objection to waive off his right to claim delayed possession compensation till October 2022.
- s. Vide his letter dt.06.07.2020, the complainant denied / refused to endorse no objection on the said proforma and asked the respondent to clear the delayed possession charges which he was entitled to claim as per order of the Hon'ble HRERA Authority dt.18.07.2019. The complainant further claimed delayed possession compensation of Rs.21,55,484/- till 30.06.2020 in this letter.
- t. The complainant received, a letter dt.27.06.2020 dispatched on 18.07.2020, on 22.07.2020, from the respondent seeking his consent for extension of time along with waiver of delayed possession compensation and third party funding the project, to which, the complainant replied,

vide his letter dt.31.07.2020 that the respondent was not entitled to invoke the escalation clause as per the ABA since the respondent didn't perform its part and reiterated that he will not waive his right to claim delayed possession compensation and that he has no objection if a third party funds the project. The complainant further claimed delayed possession compensation of Rs.22,21,382/- till 31.07.2020 in this letter.

- u. In the meanwhile, on account of respondent approaching the Home Buyers to sign the consent letter and waiving their rights of claiming delayed possession compensation, some of the home buyers signed a settlement deed dt.16.09.2020 and waived off their right to claim delayed possession compensation so that they could at least get the possession of their respective flats. At this juncture, that the complainant didn't sign the said settlement deed dt.16.09.2020 as the complainant was dubious regarding the motive of the respondent to dodge the payment of DPC and further delay the date of granting possession of the flats to the allottees.
- v. A period of almost 6 years had expired from 20.09.2017, the date on which the respondents were supposed to deliver the possession of the unit in question to the complainant, yet no offer for possession of the unit was made by the respondent. The complainant had constantly inquired from the respondent about the reasons for this delay, but the respondents have provided no reasonable justification for the inordinate delay in construction of the project. Rather, the respondent no.2, on 29.07.2023, yet again raised a demand for overdue outstanding in respect of EDNBG-0705, Ansals Highland Park, 103, Gurugram to the amount of Rs.26,05,281/- and interest of Rs.10,77,166/- without informing the complainant about the status of construction of the project.
- w. The respondents are threatening the home buyers by making illegal demands and charging interest on delayed payments through their

demand letters and emails, whereas they are liable to compensate the buyers on the account of abnormal delay in granting possession of the project as per the provisions of HRERA. However, despite several requests by the complainant, the respondent have never disclosed the status of the project and the date on which they will grant possession of the said flat.

- x. The prolonged delay in obtaining possession and the non-payment of the delayed possession charges have inflicted significant distress upon the complainant. This situation has not only impeded their ability to utilize and enjoy their property but has also resulted in financial losses and emotional turmoil. Therefore, the complainant is compelled to seek legal recourse to remedy this unjust situation and ensure that their rights as a property owner are upheld in accordance with the law.

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

- 4. The complainant has sought the following relief(s):
  - i. Direct the respondent to pay delayed possession compensation from 20.09.2017 to 20.05.2024, calculated at the prescribed rate of interest as an interim relief.
  - ii. Direct the respondents to deliver the possession of the unit in question to the complainant after completing it in all respects.
- 5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

- 6. The respondent has made the following submissions:
  - i. The complainants had approached the answering respondent for booking a unit no. EDNBG-705 in an upcoming project Ansal Highland Park, Gurugram. Upon the satisfaction of the complainant regarding

inspection of the site, title, location plans, etc. an apartment buyer agreement dated 21.03.2013 was signed between the parties.

- ii. The complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
- iii. Even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2024 and the cause of action accrue in 2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- iv. even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2013 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for Rs. 5/ sq. foot per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- v. The complaint itself discloses that the said project does not have a RERA approval and is not registered. If the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.

- vi. The respondent had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.
- vii. Respondent has adequately explained the delay. The delay has been occasioned on account of things beyond the control of the answering respondent. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- viii. The answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. Clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.

- ix. The answering respondent has clearly provided in clause 35 the consequences that follow from delayed possession. The complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
- x. As per clause 31 of the ABA, possession was to be offered within 48 months with a grace period of 6 months from the date of execution or from the date of obtaining all necessary approvals, whichever is later. However, the delay in offering the possession occurred due to reasons beyond the control of the answering respondent, including force majeure conditions and delays in approvals by statutory authorities, which are covered under the terms of agreement.
- xi. The issuance of demand notices was in accordance with the payment schedule under the agreement. The respondent has been providing necessary updates regarding the project through official channels and has not acted arbitrarily in any manner.
- xii. The report of local commissioner dated 05.08.2019 pertains to general observations and not an assessment of the specific unit or tower allotted to the complainant. The actual stage of construction varies across different parts of the project, and the respondent has taken all reasonable steps to complete the work, subject to delays caused by factors beyond its control.
- xiii. The demand raised was in accordance with the terms of ABA. The allegations regarding construction status and non-liability are misconceived. Respondent no. 1 is not liable for any DPC as alleged.
- xiv. The complainant's refusal to cooperate with the settlement process affected the respondent's efforts to secure funding which aimed at completing the project for the benefit of the allottee. The respondent denies any liability as to pay the alleged DPC. In view of the same, it is

submitted that there is no cause of action in favour of the complainant to institute the present complaint.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the Authority:**

8. 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**

9. 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 the entire Gurugram District for all purposes 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

11. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objections regarding Force Majeure.**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at Chandigarh, Environmental, NGT, and orders of other courts/authorities to curb the pollution in NCR. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 31 of agreement dated 21.03.2013, the due date of handing over of possession was provided as 21.09.2017 (grace period of 6 months is allowed being unconditional).

13. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 21.09.2017. Further, the time taken in governmental bans/guidelines cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and are for very shorter period of time. The promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

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

**G.I Direct the respondent to pay to pay delayed possession interest at prescribed rate of interest.**

**G.II. Direct the respondents to deliver the possession of the unit in question to the complainant after completing it in all respects.**

14. The complainant was allotted a unit in the project of respondent "Ansal Highland Park" in at Sector 103, Gurgaon. The builder buyer agreement was executed between the parties on 21.03.2013 for a total sum of Rs. 1,00,86,913/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 76,35,975/-.

15. As per documents available on record, the respondent has neither offered the possession of the allotted unit nor obtained occupation certificate from competent authority till date. The complainant took a plea that offer of possession was to be made in made in 2017 and the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.

16. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***Section 18: - Return of amount and compensation***

*"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

17. **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 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. 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.
19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
20. 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 31 of the agreement dated 21.03.2013, the due date comes out as 21.09.2017. The respondent yet to have obtain occupation certificate from the concerned Authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the agreement dated 21.03.2013 to hand over the physical possession within the stipulated period.
21. 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 has not been granted by the competent authority till date. 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 she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.

22. In view of the above, the complainants are entitled for delayed possession at the prescribed rate of interest @ 10.80% per annum from the due date of possession till offer of possession i.e., plus two months after obtaining occupation certificate or till actual handing over of possession, whichever is earlier.

#### **H. Directions issued by the Authority:**

23. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with 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 is directed to pay delay possession charges to the complainant against the paid-up amount of Rs.76,35,975/- at the prescribed rate of interest @ 10.80% per annum from the due date of possession i.e., 21.09.2017 till offer of possession plus two months after obtaining occupation certificate or till 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 respondent is directed to offer the valid offer of possession of the allotted unit within 2 months after obtaining occupation certificate

from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

- iii. The respondent is also directed to issue revised account statement within 60 days after adjustment of delay possession charges.
- iv. The complainant is directed to remit outstanding amount, if applicable, subsequent to the adjustment of the delayed possession charges.
- v. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to the Registry.



**(Phool Singh Saini)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 23.12.2025**