

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

**Complaint no. :** 4582 of 2023  
**Date of complaint :** 12.10.2023  
**Date of order :** 09.12.2025

Manoj Kumar

**R/o:** - Sohna Road, Sector-38, Islampur (97), Gurgaon,  
Haryana.

**Complainant**

Versus

Pivotal Infrastructure Pvt. Ltd.

**Regd. Office at:** - 309, 3<sup>rd</sup> Floor, JMD Pacific Square,  
Sector-15, Part-II, Gurugram-122001.

**Respondent**

**CORAM:**

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman  
Member**

**APPEARANCE:**

Shri Rajan Kumar Hans (Advocate)

Shri Ankit Vohra (AR)

**Complainant  
Respondent**

**ORDER**

1. This 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 allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Name and location of the project	"99 Marina Bay" Commercial Space/Shops situated in "Riddhi Siddhi" Project at Sector 99, Gurgaon, Haryana
2.	Nature of the project	Affordable Group Housing
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 valid Up to 08.08.2019
5.	RERA Registered/ not registered	<b>Registered</b> 236 of 2017 dated 19.09.2017 Valid up to 08.08.2019
6.	Registration extension vide no.	Harera/GGM/REP/RC/236/2017/ EXT/177/2019 dated 30.12.2019 valid up to 31.08.2020
7.	Unit no. (Commercial Shop)	Shop No.- 022 in Tower/Block no.-99 Marina Bay (As per page no. 17 of the complaint)
8.	Unit area admeasuring	248.800 sq. ft. (Super area) (As per page no. 17 of the complaint)
9.	Date of building plan approval	17.10.2014 (As per page no. 18 of the reply)
10.	Environmental clearance dated	22.01.2016 (As per page no. 24 of the reply)
11.	Date of execution of agreement	20.06.2018 (As per page no. 17 of the complaint)
12.	Possession clause	Not provided
13.	Possession clause as per AHP, 2013.	1(iv)All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environment clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.

14.	Due date of possession	<b>22.01.2020</b> [ <b>Note:</b> Due date of possession to be calculated 48 months from the date of environmental clearance i.e., 22.01.2016]
15.	Assured Clause/ Return payment Down assurance benefit plan	<i>The first party shall pay monthly instalments for <b>Down Payment Benefit Plan @ 120 PSF i.e., Rs.29,856/- monthly till the date of issuance of possession letter, post-dated cheques for the same shall be issued in advance for 1 year and to be followed every subsequent year.</b></i> (As per page no. 19 of the complaint)
16.	Total sale consideration	Rs.29,85,600/- (As per page no. 17 of the complaint)
17.	Amount paid by the complainant	Rs.31,64,735/- (As per receipt information on page no. 21-22 of the complaint)
18.	Application for grant of OC	22.12.2022 (As per page no. 44 of reply)
19.	Occupation certificate	Not obtained (As confirmed by the counsel for the respondent during proceedings dated 09.12.2025)
20.	Offer of possession	Not offered
21.	Assured return	Rs.10,09,787/- Paid till March, 2021 (as mentioned in reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That DTCP Haryana has issued a licence no. 86 of 2014 to respondent to develop an Affordable Housing Project as per the guidelines mentioned under Affordable Housing Policy 2013, issued by Government of Haryana, vide Town and Country Planning Department's Notification dated 19.08.2013.
- II. That in year 2018, the complainant got information about an advertisement in a local newspaper about the Shops/Commercial units

in affordable housing project "Riddhi Siddhi" at Sector 99, Gurugram, Haryana. When they called on the phone number provided in the newspaper, The marketing staff of the respondent showed a rosy picture of the project, allured them with the proposed specifications, and invited them for a site visit. That the complainant visited the project site and met with the local staff of the respondent.

- III. That the complainant applied for a commercial shop unit in project of respondent namely "99 Marina Bay" being part of affordable housing project "Riddhi Siddhi" at Sector 99, Gurugram, Haryana, for which the complainant had remitted Rs.2,00,000/- towards booking the shop.
- IV. That respondent allotted shop/unit bearing No.022, Shop in commercial complex named as "99 Marina Bay" admeasuring 248.800 sq. ft., in affordable housing "Riddhi Siddhi" at Sector 99, Gurugram, Haryana. The shop/unit was purchased under the time link payment plan as per the mandate under Affordable Housing Policy 2013 for basic sale consideration of Rs.29,85,600/-.
- V. That the respondent and the complainant entered into an agreement wherein as per clause for the payment of "Down Payment Benefit Assurance Plan". The respondent agreed to pay monthly instalments at Rs.120 PSF i.e., Rs.29,856/- from the date of agreement till the time of actual offer of possession.
- VI. That till date complainant had paid Rs.31,64,735 (Including of Taxes & VAT) wherein Rs.28,25,656/- (Excluding Taxes & VAT), but when complainant observed that there is no progress in construction of subject shop/unit for a long time, he raised their grievance to respondent.
- VII. That the complainant has always paid the instalment(s) on time and the last instalment was paid on 06.06.2018. That there is a slow

progress in the construction of the project, and it is expected to take around 1-2 years more for the completion of the project.

- VIII. That the respondent last paid the monthly instalment in April 2021 and has not paid any amount since then and even after many verbal communications by complainant was raised no satisfactory response has been received from the respondent.
- IX. That the main grievance of the complainant in the present complaint is that, in spite of the complainant having paid 100 % of the actual amount of the shop/unit, the respondent has failed to deliver the possession of the shop/unit which was a core promise of the Affordable Housing Policy, 2013.
- X. That also respondent has stopped paying monthly interest of Rs.29,856/- from the month of April 2021 which itself is a contravention to the obligation under the agreement executed between the complainant and the respondent.
- XI. That as per Section 18 of the RERA Act of 2016, the promoter is liable to refund the amount or pay interest at the prescribed rate of interest and compensation to the allottees of an apartment, building, or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- XII. That the complainant had purchased the shop/unit with the intention that, after purchase, his family would use the shop/unit for their personal use. That it was promised by the respondent at the time of receiving payment for the shop/unit that the possession of fully constructed shop/unit as shown in Newspaper at the time of sale, would be handed over to the complainant on and after the payment of last and final instalment. That this instalment becomes accrue on every 6 months after the commencement of construction work, and the

respondent was under obligation to deliver the project complete in all respect as and when the respondent takes the last instalment or by maximum till 22.01.2020. (as per Affordable Housing Policy, the possession of a shop/unit needs to be given within 48 months from the date of approval of building plans or from the date of environmental clearance, whichever is later).

- XIII. That due to the above acts of the respondent and the terms and conditions of the apartment buyer agreement, and of Affordable Housing Policy 2013, the complainant have been unnecessarily harassed mentally as well as financially, therefore the Respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XIV. That DTCP, Haryana is also liable to for their negligence to monitor the progress of the project as in the case of affordable housing, Government / DTCP Department plays an active role and when the respondent has miserably failed to complete the structure as per the schedule specified in apartment buyer agreement and as per the Haryana Affordable Housing Policy 2013 (i.e. 4 years from the date of grant of Building Approvals or from the date of grant of environmental Clearance, which is later), by Town and Country Planning Department. It has been more than 1 year since the DTCP has failed to take any action against the respondent regarding the failure of the respondent to hand over the possession to allottees.
- XV. Hence, the respondent has failed to adhere to the guidelines mentioned in Affordable Housing Policy, 2013.
- XVI. That for the first time cause of action for the present complaint arose on 29.05.2018, the complainant applied in the project by paying the booking amount of Rs.2,00,000/- and further on 20.06.2018 when a

one sided, arbitrary and unilateral sale agreement was executed between the parties. Further, the cause of action arose on 22.01.2020 when the respondent failed to hand over the possession of the shop/unit as per the buyer agreement and again in April 2021 when the respondent failed to provide the monthly interest under the down payment benefit plan till date. The cause of action again arose on various occasions, till date, when protests were lodged with the respondent about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to pay pending assured return of Rs.29,856/- per month from the month of April, 2021 till the actual legal possession;
  - ii. Direct the respondent to pay interest at the prescribed rate on delayed possession from the due date of possession i.e., 22.01.2020 till date of actual possession;
  - iii. Direct the respondent to give legal, peaceful and physical possession of the shop after obtaining occupation certificate and seek necessary governmental clearances before handing over the physical possession of the shop;
  - iv. Any other relief which the Authority deems fit and proper in the facts & circumstances of the present complaint.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

6. The respondent contested the complaint by way of reply dated 08.02.2024 on the following grounds: -

- i. That this Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
- ii. That the respondent was granted a license bearing no. 86 of 2014 dated 09.08.2014 for the development of an affordable group housing residential colony on the land admeasuring area of 6.19375 acres situated in the revenue state of village Kherki-Marja Dhankot, Sector-99, Gurugram. The respondent, thereafter, obtained all the relevant approvals and sanctions to commence the construction of the project. the respondent obtained the approvals of the building plans vide approvals dated 17.10.2014 and also obtained the environmental clearance vide approval dated 22.01.2016.
- iii. That the respondent and complainant execute the agreement on 20.06.2018 and in the said agreement, the respondent specifically mentioned that they developed the commercial shop bearing no. 22, having super area of approx. 248.800 sq. ft. named as "99 Marina Bay" in the affordable group housing project by the name of "Riddhi Siddhi" situated on land admeasuring 6.19375 acers in the revenue village of Kherki Majra, Dhankot, Sector - 99, Tehsil and District Gurugram, Haryana.
- iv. That after revised the site plan the respondent increase the area of commercial shop bearing no. 22, approx. 258.18 sq. ft. instead commercial shop bearing no.22, having its area 248.18 sq. ft. Thereafter the respondent through demand letter informed the complainant the allotted commercial shop bearing no.22, having its area 258.18 sq. ft. Thereafter the respondent issued several demand letters against the complainant and the complainant accepted each and every demand letter.

- v. That the respondent has paid the assured return as per the down payment benefit plan from June, 2018 to March, 2021 amounting to Rs.10,09,787/- including TDS.
- vi. That it is clearly evident from the aforesaid approvals granted by the various authorities, that the respondent was entitled to complete and build the project till 31.08.2020. However, due to the outbreak of the pandemic Covid-19 in March 2020, a National Lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view of the difficulties in completing the project by real estate developers, this Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020.
- vii. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, New Delhi; Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi; Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed to the delay in completing the project within the specified time period.
- viii. That the complainant had failed to make timely payments and there were substantial delays in making the payments of the due instalments. Therefore, the complainant is forbidden to demand the timely performance of the 'contractual obligation' by the respondent wherein the complainant himself had failed to perform his part of the 'contractual obligations' on time.

- ix. That the present project is an affordable group housing project being developed in accordance with the provision of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the respondent was paid the allotment price in instalments. Though, the allotment price was fixed by the Government of Haryana in the year 2013, but the same was not revised till date. Although the construction cost for increased manifold, but the Government of Haryana had failed to increase the allotment price.
- x. That the grant of interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as applicable to other normal group housing real estate projects is wholly unreasonable and unjust, will impose unnecessary financial burden on the respondent and it shall have a cascading effect on the development and construction works of the project and in obtaining all other relevant approvals.
7. 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 submissions made by the parties.
- E. Jurisdiction of the Authority:**
8. The respondent has raised a preliminary submission/objection that the Authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 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**

10. 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)(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.*

11. 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.

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

**F. I Objection regarding force majeure conditions:**

12. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, demonetization and implementation of GST and outbreak of Covid-19 pandemic, etc. However, all the pleas advanced in this regard are devoid of merit. Firstly, the events

taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the events of demonetization and the implementation of GST are in accordance with government policy and guidelines. Therefore, the respondent cannot categorize them as force majeure events. Thus, the same is devoid of merits and lastly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

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

- G.I Direct the respondent to pay pending assured return of Rs.29,856/- per month from the month of April, 2021 till the actual legal possession;**
- G.II Direct the respondent to pay interest at the prescribed rate on delayed possession from the due date of possession i.e., 22.01.2020 till date of actual possession;**
- G.III Direct the respondent to give legal, peaceful and physical possession of the shop after obtaining occupation certificate and seek necessary governmental clearances before handing over the physical possession of the shop;**
- G.IV Any other relief which the Authority deems fit and proper in the facts & circumstances of the present complaint.**

13. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
14. The complainant in the present complaint is seeking payment of pending down payment benefit amount as per the terms of the agreement dated 20.06.2018. The complainant has submitted that the respondent was obligated to pay down payment benefit amount to the complainant from the date of receipt of payment of booking amount till the date of issuance of offer of possession after receipt of occupation certificate. However, the respondent paid the assured return to the complainant till March, 2021 and thereafter stopped the payment of the assured return. The respondent has contended that the Authority does not have jurisdiction to adjudicate the present complaint.
15. The Authority observes that money was taken by the promoter as deposit in advance against allotment of immovable property in favour of the allottee and in view of taking sale consideration by way of advance, the promoter promised certain amount by way of down payment benefit amount for a certain period. So, on its failure to fulfil that commitment, the allottee has a right to approach the Authority for redressal of his grievances by way of filing a complaint. Further, if the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. Thus, the promoter is liable to pay that amount as agreed upon.
16. In the present complaint, the down payment benefit was payable as per clause 5 A & B of the agreement dated 20.06.2018, which is reproduced below for the ready reference:

*"5.A. The first party shall pay monthly installments for Down Payment Benefit Plan @ 120 PSF i.e., Rs.29,856/- monthly till the date of issuance of possession letter, post-dated cheques for the same shall be issued in advance for 1 year and to be followed every subsequent year.*

*5.B. The Down payment benefit amount shall be payable for the period commencing on the completion of down payment by the 2<sup>nd</sup> party after the payment of the booking amount and till the date the letter offering possession of the unit (the 'possession letter') is issued to the second party subject to all subsequent payment paid timely by the second party as per the plan ("The Plan"). The company shall issue the possession letter only after having received the occupation certificate from the competent authority in relation to the commercial complex;"*

Further, the Down Payment Benefit Plan (The Plan) provides that the booking amount was paid by the complainant-allottee on 29.05.2018. Thus, the agreed down payment benefit was payable w.e.f. 29.05.2018 till the letter for offer of possession is issued to the complainant.

17. In light of the reasons mentioned above, the Authority is of the view that as per the agreement dated 20.06.2018, it was obligation on the part of the respondent to pay the down payment benefit. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in agreement dated 20.06.2018. Accordingly, the liability of the respondent to pay down payment benefit as per agreement is still continuing. Hence, the respondent/promoter is directed to pay down payment benefit to the complainant at the agreed rate from the date i.e., 29.05.2018 till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate as per the agreement dated 20.06.2018, after deducting the amount already paid on account of assured return to the complainant.
18. Further, the complainant is seeking delay possession charges at prescribed rate from the respondent in terms of Section 18 of the Act, 2016.

19. **Due date of possession:** That as per Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

*"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.*

**(Emphasis supplied)**

20. The respondent has obtained environment clearance and building plan approval in respect of the said project on 22.01.2016 and 17.10.2014 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. The due date of possession of the unit as per Clause 1(iv) of the Affordable Housing Policy, 2013 is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016, being later. Therefore, the due date of possession comes out to be 22.01.2020.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.*

22. 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.
23. 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., 09.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*  
*Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
25. 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 complainant in case of delay possession charges.
26. On consideration of the documents available on record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. It is determined that the

possession of the subject unit was to be delivered by 20.01.2020. However, the respondent has failed to hand over possession of the subject unit till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the booked unit to the complainant. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the promoter as well as allottees.

27. 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 the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. 20.01.2020 till offer of possession plus 2 months after obtaining completion certificate from the competent authority 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.
28. The Authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for down payment benefit even after expiry of due date of possession, is entitled to both the down payment benefit as well as delay possession charges?

To answer the above proposition, it is worthwhile to consider that the down payment benefit is payable to the allottee on account of a provision in the BBA. The Authority observes that the purpose of down payment benefit and delay possession charges is similar and the same is to be provided to the allottee to safeguard his interest as the money of the allottee is continued to be used by the promoter even after the promised due

date and in return, he is to be paid either the down payment benefit or delay possession charges whichever is higher as the payment of assured return and the delay possession charges would result in double benefit to the complainant and would not balance the equities between the parties. Accordingly, the Authority decides that the allottee shall be entitled to down payment benefit or delay possession charges, whichever is higher without prejudice to any other remedy including compensation.

29. The Authority observes that as per the agreement dated 20.06.2018, the down payment benefit amount which has been committed by the promoter is @Rs.120/- per sq. ft. per month (i.e., comes to Rs.29,856/- per month) till issuance of possession. Whereas the delayed possession charges @10.85% of the paid-up amount is payable approximately Rs.28,614/- per month from the due date of possession till offer of possession after receipt of occupation certificate from the competent authority.
30. Accordingly, the Authority decides that in cases where down payment benefit is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to down payment benefit or delayed possession charges, whichever is higher, without prejudice to any other remedy including compensation.
31. If we compare this down payment benefit with delay possession charges payable under proviso to Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the down payment benefit is much better. By way of down payment benefit, the interest of the allottee is protected even after the due date of possession is over.
32. Therefore, considering the above said facts, the Authority directs the respondent to pay down payment benefit amount @Rs.120/- per sq. ft. per

month (i.e., comes to Rs.29,856/- per month) from the date of payment of booking amount i.e., 29.05.2018 till issuance of valid offer of possession after obtaining completion certificate from the competent authority, being higher than delay possession charges.

33. The respondent is directed to pay the outstanding accrued down payment benefit amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
34. The respondent is further directed to handover possession of the subject unit allotted to the complainants in terms of Section 17(1) of the Act of 2016 after obtaining completion certificate from the competent authority.

**F. Directions of the Authority:** सत्यमेव जयते

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

- i. The respondent/promoter is directed to pay down payment benefit to the complainant at the agreed rate from the date i.e., 29.05.2018 till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate as per the agreement dated 20.06.2018, after deducting the amount already paid on account of assured return to the complainant.
- ii. The respondent is directed to pay arrears of accrued assured return as per agreement dated 20.06.2018 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

- iii. The respondent is further directed to handover possession of the subject unit allotted to the complainants in terms of Section 17(1) of the Act of 2016 after obtaining completion certificate from the competent authority.
  - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement dated 20.06.2018.
36. Complaint stands disposed of.
37. File be consigned to registry.



**Phool Singh Saini**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram



**Arun Kumar**  
(Chairman)

Dated: 09.12.2025



**HARERA**  
**GURUGRAM**