

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

Complaint no. : 5392 of 2024
Order pronounced on : 17.10.2025

Sunil Sachdev
R/o: B-82, Ground Floor, Astaire Gardens,
Sector 70A, Gurugram, Haryana.

Complainant**Versus**

1.M/s Countrywide Promoters Private Limited
Regd. office: OT-14, 3rd Floor, Next Door Parklands,
Sector-76, Faridabad

2. M/s BPTP Limited

Regd. office: BPTP Capital City, 6th floor, Unit No. 2B, Sector
94, Gautam Budh Nagar, Noida, Uttar Pradesh-201301

Respondents**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Shri Gaurav Rawat (Advocate)
Shri Harshit Batra (Advocate)

**Complainant
Respondents****ORDER**

1. The present complaint has been filed by the complainant/allottees 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. No.	Heads	Information
1.	Name and location of the project	"Astaire Gardens", sector-70 A, Gurugram
2.	Nature of the project	Group Housing Project
3.	Area of the project	102.2 acres
4.	DTCP License	62 of 2021 dated 01.09.2021 valid upto 31.10.2026
5.	RERA registered/ not registered	Registered 55 of 2021 dated 21.09.2021 valid upto 31.08.2026
6.	Unit no.	B-82-Ground Floor (page 45 of complaint)
7.	Unit area	2512 sq. ft. (page 45 of complaint)
8.	Allotment letter	05.01.2012 (page 121 of reply)
9.	Date of execution of builder buyer's agreement	12.06.2012 [Page 39 of complaint]
10.	Possession clause as per BBA	5.1 <i>the seller/ confirming party proposes to hand over the physical possession of the said unit to the purchaser within a period of 36 months from the date of approving of building plan or execution of floor buyers' agreement, whichever is later.</i> [Page 49 of complaint]
11.	Date of building plans	15.05.2013
12.	Due date of possession	15.05.2016 (calculated from the date of building plans being later)

13.	Total sale consideration	Rs. 1,25,70,001/- [Page 72 of complaint]
14.	Total amount paid by the complainant	Rs. 92,99,070 /- [Page 72 of complaint]
15.	Offer of possession	18.06.2018 (page 70 of complaint)
16.	Occupation certificate	30.05.2018 (page 221 of reply)

B. Facts of the complainant:

- i. In 2013, the respondent company issued an advertisement announcing a project called "ASTAIRE GARDENS", situated at Sector 70A, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.
- ii. That the complainant is allottee within the meaning of Section 2 (d) of The Real Estate (Regulation and Development) Act, 2016. The respondent company, is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.
- iii. The complainant while searching for a unit was lured by such advertisements and calls from the brokers of the respondent for buying apartment in their project. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments. The respondent widely published their project on the website and claiming that the "Astaire Gardens" is situated on the premium location and is a unique project.

- iv. Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a unit in the project by paying a booking amount towards the booking of the said unit, in Sector 70A and the same was acknowledged by the respondent.
- v. That the respondent confirms the booking of the said unit to the complainant, asking to get submitted the relevant documents provided in the letter and the same was duly submitted by the complainant on time. Further, providing the details of the project, confirming the booking of the unit dated 13.12.2011, allotting a unit no. B-82-GF admeasuring 2512 sq. ft. in the aforesaid project of the developer for a basic sale consideration of the unit i.e. Rs.1,03,87,999/- and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid. It is pertinent to mention here that originally the booking was made in favour of the compianant and his mother namely Pushpa Sachdev. It is submitted that on 19.11.2012 complainant duly submitted all the necessary documents to the respondent builder as asked to submit for the name deletion of the co-applicant i.e. mother namely Pushpa Sachdev but same was not done. Thereafter, vide email dated 04.12.2012, complainant again send reminder email for the name deletion and assurance was provided that the same will be done.
- vi. That after repeated request and reminders by the complainant and after delay of more than 6 months respondent sent a letter to the complainant along with copy of buyer's agreement requesting to sign and return all the copy. The respondent very clearly stated in the said letter that the buyer's agreement was in terms of allotment letter already sent by the respondent.
- vii. That a buyer's agreement was executed between the complainant and respondent on 12.06.2012.

- viii. That after the repeated request and reminders from the complainant the respondent sent a letter to the complainant stating that the unit is ready for possession.
- ix. That respondent issued possession letter dated 18.06.2018 in favour of the complainant. It is pertinent to note here that along with the above said demand letter respondent raised several illegal demands on various account which are actually not payable as per the buyer agreement. Furthermore, respondent has asked for the GST, but the due date of handing over of the possession is much prior to the date of enforcement of the GST. Hence, respondent cannot charge the same. Furthermore, it is most respectfully submitted that the Hon'ble Authority appointed the committee for the said project which gave detail report on the various issues and the respondent raised the demand and collected the amount against the committee report. It is pertinent to mention here that along with said offer of possession respondent raised following illegal demands: - Club membership charges, cost escalation charges, interest on delay payment, power backup charges, GST etc.
- x. That raising demand letter by the respondent on payment of charges which the unit buyer is not contractually bound to pay, cannot be considered to be a valid demand letter/offer of possession. It would be noticed from the details provided above that those charges were never payable by the complainant as per the agreement, by the complainant and hence the demand letter is not valid. It is pertinent to mention here that at the time of offer of possession respondent failed to provide the copy of OC of the said unit.
- xi. That the respondent asked the complainants to sign the indemnity bond as prerequisite condition for handing over of the possession. Allottee raised objection to above said pre-requisite condition of the respondent as no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if

the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same.

- xii. The fact is that the complainants has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.
- xiii. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- xiv. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 1,25,70,001/- towards the said unit against basic sale consideration of the unit i.e. Rs.1,03,87,999.
- xv. That the complainant was living on the rental accommodation and was in dire need of the said unit for self-use. Hence, complainant paid the above said illegal demands in time bound manner on the bases of the representation of the respondent the physical possession will be handover. After, the receipt of the said amount when complainant approached the respondent for physical possession, respondent issued No objection certificate dated 26.12.2018 in favour of the complainant and assurance was provided that the possession will be handed over after completion of final finishing work of the said unit. Thereafter, again when complainant approach the respondent for the physical handover it was refused stating that firstly you have to get the name deletion of the Co-applicant as in record still Co-applicant name is not removed. It is pertinent to mention here that originally the booking was made in favour of the complainant and his mother namely Pushpa Sachdev. It is submitted that on 19.11.2012 complainant duly submitted all the necessary documents to the respondent builder as asked to submit for the name deletion of the Co-applicant

i.e. mother namely Pushpa Sachdev but same was not done. Thereafter, vide email dated 04.12.2012, complainant again send reminder email for the name deletion and assurance was provided that the same will be done. It was very shocking for the complainant that respondent did not delete the name of Co-applicant despite submission of the documents and the physical possession was denied to the complainant. Furthermore, representative of the respondent company misled the complainant that he is first required to obtain the succession certificate thereafter only possession will be handed over. Thereafter, after completing all the formalities respondent issue letter dated 14.12.2020 in favour of the complainant on account of name deletion.

- xvi. That after the repeated request and reminders, despite timely payment of the demands whenever raised and due to wrong act of the respondent, complainant was burdened double by paying the EMI's as well the rent. Thereafter, finally after delay of more than 3 years from the date of offer of possession, physical possession of unit was handed over to the complainant on 01.12.2021.
- xvii. That the respondent acting arbitrarily without handing over the possession of the said unit raised demand on account of maintenance from the date of IOP i.e. 18.06.2018 along with interest @18%. Complainant sent various emails challenging the same but till date respondent failed to provide any satisfactory response till date. Even in physical meeting at the office of the respondent company, representative of the respondent company duly admitted their mistake and further assured to rectify the maintenance demand and assured to send the rectified one but all in vain till date respondent failed to do so.
- xviii. That on the bases of the assurance and after repeated reminders and request, respondent finally in month of June,2024 agreed to get the conveyance deed executed in favour of the complainant and asked the complainant to submit the stamp duty charges along with NOC and further fixed deposit of Rs. 1,423/- and

administrative charges cheque of Rs 5,900 /-and same was duly submitted by the complainant but till date despite repeated request and reminders respondent failed to get the conveyance deed executed.

- xix. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.

C. Relief sought by the complainant:

3. The complainant has sought the following relief(s):
 - i. Directing the respondent to execute the conveyance deed.
 - ii. Direct the respondent to pay the delay possession interest on the total amount paid by the complainant.
 - iii. To order the respondent to pay the balance amount due to the complainant from the respondent on account of the interest.
 - iv. To order the respondent to refund the GST amount calculated from the complainant as the due date of handing over of the possession.
 - v. To restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters.
 - vi. To order the respondent to set aside demand letters on account of maintenance charges from the date of offer of possession despite the fact the possession was not handed over to the complainant.
 - vii. To restrain the respondent from charging penal interest from the complainants.
 - viii. To direct the respondent to the amount refund collected from the complainant under different heads along with offer of possession demand which are not payable as per the committee report appointed by the Hon'ble Authority.

- ix. To direct the respondent to pay interest of the amount received on account club membership charges till the club functional as the club was not functional when the demand was raised.
 - x. To direct the respondent to rectify the seepage issue in the said allotted unit.
 - xi. To quash the illegal offer of possession cum demand letter dated 18.06.2018.
 - xii. To order the respondent not to force the complainant to sign any undertaking indemnity indemnifying the builder from anything legal as a precondition for signing the conveyance deed and to set a side indemnity cum undertaking indemnifying the builder obtain by the builder as prerequisite condition handing over possession.
 - xiii. To order the respondent not to unnecessary harass the complainant by cutting the electricity, denying the permission to the club and stop the essential services and to provide the calculation maintenance being charged from complainant.
 - xiv. To direct the respondent to get the proper maintenance agreed executed with the complainant.
4. 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:

- i. That at the outset it is submitted that respondent no. 1 is only a confirming party to the floor buyer's agreement executed between the parties and no specific relief has been sought from respondent no. 1. Hence, respondent no. 1 is not a necessary party to the present complainant and the name of respondent no. 1 should be deleted from the array of parties. The respondent no. 1 is not a separate legal entity as of date and no legal action can be proceeded against the

- respondent no. 1, hence, the name of the respondent no. 1 should be deleted from the array of parties.
- ii. That the complainant and his mother Mrs. Pushpa Sachdev, being interested in the real estate development of respondent no. 2, known under the name and style of "Astaire Gardens" located at Sector 70A, Gurugram, Haryana booked a unit in the said project after conducting their due diligence. It is submitted that prior to approaching respondent no. 2, the allottees had conducted extensive and independent inquiries regarding the project and it was only after the allottees were fully satisfied with regard to all aspects of the project, that they took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent no. 2.
 - iii. That consequently, a unit bearing no. B-82-GF, tentatively admeasuring 2,512 sq. ft. was allotted to the complainant vide allotment letter dated 05.01.2012. Thereafter, a floor buyer's agreement dated 12.06.2012 was executed between the parties. It is pertinent to mention that the agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties. It is respectfully submitted that the rights and obligations of the allottees as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect.
 - iv. Subsequently, the allottees took a home loan against the unit and thus the parties entered into a tripartite agreement dated 29.12.2012.
 - v. That it is submitted that on account of the death of Mrs. Pushpa Sachdev, the co-allottee, the complainant applied for her name deletion hence, on the basis of the documentation submitted by the complainant, the name deletion was allowed vide letter dated 14.12.2020. At this stage, it is pertinent to mention that there was a delay in processing the name deletion of the co-allottee because the documents provided by the complainant were not complete as the

complainant himself provided the bank NOC in the year 2020. It is pertinent to mention here that any process to delete or amend the name cannot be processed without the complete documents. That as soon as the bank NOC was received, the respondent no.2 while acting diligently deleted the name and provide the name deletion letter within 12 days of receiving the complete documents. Hence, any delay occurred was due the fault of the complainant himself and now the complainant is trying to put the blame upon the respondent thereby proving the malafide intentions of the complainant.

- vi. That as per clause 5 of the agreement, respondent no. 2 proposed to hand over the possession of the unit within a period of 36 months from the date of sanction of the building plan or execution of the agreement, whichever is later, with a grace period of 180 days.
- vii. That the agreement was executed on 12.06.2012 and the building plan was sanctioned on 15.05.2013 hence, the proposed due date of possession comes out to be 15.05.2016. It is most humbly submitted that the proposed due date was subject to the happening of the force majeure and other circumstances beyond the control of the company, the benefit of which is bound to be given to respondent no. 2 in accordance with clause 14 of the agreement.
- viii. Furthermore, it needs to be seen that the development of the unit and the project as a whole is largely dependent on the fulfillment of the obligation of the allottees in timely clearing their dues. That the due date of the offer of possession was also dependent on the timely payment by the complainant, which, the complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainant delayed the payment against the unit.
- ix. It is further submitted that despite there being a number of defaulters in the project, respondent no. 2 had to infuse funds into the project and have diligently developed the project in question. It was the obligation of the complainant to

make the payments as per the adopted payment plan as well as the agreed terms and conditions of the agreement. It is submitted that the demand letters were raised as per the agreed payment plan however, the complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainant from time to time. The bonafide of respondent no. 2 is also essential to be highlighted in this instance, who had served various request letters at every stage and reminder notice in case of non-payment.

- x. That it must be noted by the Hon'ble Authority that despite the default caused, the answering respondent applied for an Occupation Certificate in respect of the said unit on 08.11.2017 and the same was thereafter issued vide memo bearing no. 5704 dated 30.05.2018. It is pertinent to note that once an application for the grant of an Occupation Certificate is submitted for approval in the office of the concerned statutory authority, respondent no. 2 ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent no. 2 cannot exercise any influence. As far as respondent no. 2 is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining the occupation certificate. No fault or lapse can be attributed to respondent no.2 in the facts and circumstances of the case.
- xi. That even after the defaults of the complainant, respondent no. 2 completed the construction of the unit and offered the possession of the unit to the complainant on 18.06.2018 and earnestly requested the complainant to take possession of the unit after remittance of the balance sales consideration of the unit. It is submitted that respondent no. 2 also credited the delayed compensation of Rs.9,54,956 at the time of the offer of possession of the unit.

However, the complainant failed to take possession of the unit in a timely manner.

- xii. It is submitted that all the demands were raised by the respondent no. 2 as per the terms and conditions of the agreement executed between the parties. That the complainant had agreed to make payment of the club membership charges and GST at the time of execution of the agreement.
- xiii. Further, it is submitted that respondent no. 2 has been continuously requesting the complainant to take possession of the unit and in this regard, respondent no. 2 also issued various reminders. However, the complainant did not pay any heed to the legitimate, just, and fair requests of respondent no. 2. All requests of respondent no. 2 to take possession of the unit after making all the due payments fell on deaf ears of the complainant.
- xiv. That the timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties as per clause 7 of the agreement.
- xv. That it is submitted that after a delay of approx. 3 years from the offer of possession, the complainant took possession of the unit on 15.12.2021.
- xvi. That the complainant has filed the present complaint however, the same deserves to be dismissed as is barred by limitation as the complaint had been filed after a delay of more than 3 years from the date of offer of possession of the unit.
- xvii. That without prejudice to the rights of respondent no.2, it is must humbly submitted that this Ld. Authority has the power to consider the principle of delays and latches which form a part of public policy and bar the unvigilant litigants from exploiting the recourses of the forums.
- xviii. That, however, the respondent no. 2 was faced with a number of force majeure circumstances and circumstances beyond its control that led to the delay in the project. Moreover, the complainant and allottees had been in default of making

timely payment and hence, an extension for such a period should be additionally granted to the respondent no. 2.

- xix. It is submitted that respondent no. 2 had already possession of the unit to the complainant and has already credited the delayed compensation of Rs.9,54,956 at the time of the offer of possession of the unit. Thereafter, the complainant had executed an indemnity cum undertaking dated 02.07.2024, wherein the complainant agreed not to raise any claim or demand of any nature whatsoever, now or anytime in the future, against the Developers.
- xx. That after the execution of the indemnity cum undertaking, the Parties are estopped from making any claims at this instance.

E. Jurisdiction of the Authority:

5. 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

6. 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

7. 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.

8. 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 complainant at a later stage.

F. Findings on relief sought by the complainants:

- F.I. Direct the respondent to pay the delay possession interest on the total amount paid by the complainant.
- F.II. To order the respondent to pay the balance amount due to the complainant from the respondent on account of the interest.
- F.III. To order the respondent to refund the GST amount calculated from the complainant as the due date of handing over of the possession.
- F.IV. To restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters.
- F.V. To order the respondent to set aside demand letters on account of maintenance charges from the date of offer of possession despite the fact the possession was not handed over to the complainant.
- F.VI. To restrain the respondent from charging penal interest from the complainants
- F.VII. To direct the respondent to the amount refund collected from the complainant under different heads along with offer of possession demand which are not payable as per the committee report appointed by the Hon'ble Authority.
- F.VIII. To direct the respondent to pay interest of the amount received on account club membership charges till the club functional as the club was not functional when the demand was raised.
- F.IX. To direct the respondent to rectify the seepage issue in the said allotted unit.
- F.X. To quash the illegal offer of possession cum demand letter dated 18.06.2018.
- F.XI. To order the respondent not to force the complainant to sign any undertaking indemnity indemnifying the builder from anything legal as a precondition for signing the conveyance deed and to set a side indemnity cum undertaking indemnifying the builder obtain by the builder as prerequisite condition handing over possession.

F.XII. To order the respondent not to unnecessary harass the complainant by cutting the electricity, denying the permission to the club and stop the essential services and to provide the calculation maintenance being charged from complainant.

F.XIII. To direct the respondent to get the proper maintenance agreed executed with the complainant.

9. The above-mentioned reliefs 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.
10. The complainant applied for the allotment in the project i.e., "Astaire Gardens" located in sector-70A, Gurugram being developed by the respondents. The respondents issued an allotment letter dated 05.01.2012 in favour of the allottee i.e. Sunil Sachdev and thereby intimated about the allotment of unit no. B-82, Ground floor in the project of the respondents. Thereafter, on 12.06.2012 the buyer's agreement was executed between the allottee and the respondents at the sale consideration of Rs.1,25,70,001/-. The complainant has paid a sum of Rs. 92,99,070/- towards the subject unit.
11. As per documents available on record, the respondents have offered the possession of the allotted unit on 18.06.2018 after obtaining of occupation certificate from competent authority on 30.05.2018. The complainant took a plea that offer of possession was to be made in made in 2018, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
12. In the present complaint, the complainant 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."

13. Clause 5.1 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

5. " Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.

14. **Due date of handing over possession:** The promoter has proposed to handover the possession of the said unit within 36 months with a 180 days grace period from the date of execution of the buyer's agreement or the date of sanctioning of the building plan, whichever is later. In the present complaint, the buyer agreement was executed on 12.06.2012 and the date of sanctioning of the building plans is 15.05.2013. Therefore, the due date of handing over possession as per of sanctioning of the building plans comes out to be 15.05.2016.

15. **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]

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.

16. 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.
17. 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., 17.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
18. 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;"*

19. 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 the same as is being granted her in case of delayed possession charges.
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 5.1 of the buyer's agreement dated 12.06.2012, and the due date comes out as 15.05.2016. Occupation certificate was granted by the concerned authority on 30.05.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.06.2012 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 was granted by the competent authority on 30.05.2018. The respondent offered the possession of the unit in question to the complainant only on 18.06.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically 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 complainant is entitled for delayed possession at the prescribed rate of interest @10.85% per annum from the due date of possession till valid offer of possession plus two months after obtaining occupation 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.

F.IX Direct the respondent to execute conveyance deed.

23. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

24. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of, the subject unit, however, the respondent's promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondents shall execute the conveyance deed of the allotted unit within 3 months alter the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

G. Directions issued by the Authority:

25. 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 respondents are directed to pay delay possession charges at the prescribed rate of interest @ 10.85% per annum from the due date of possession i.e., 15.05.2016 till valid offer of possession (after obtaining occupation certificate) made on 18.06.2018 plus two months, or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - II. The respondents are directed to execute the conveyance deed within a period of three months in favour of the complainant.
 - III. The respondents shall not charge anything from the complainant which is not the part of the builder buyers' agreement.
 - IV. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.
26. Complaint stands disposed of.
27. File be consigned to the Registry.

Dated: 17.10.2025


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