

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

Complaint no. : 2112 of 2024
First date of hearing: 23.08.2024
Date of decision : 31.10.2025

Rahul Prakash And Niti Gautam
R/o: -B Ground Floor, 4/45, Wazir Hassan Road,
Lukcknow, U.P - 226001

Complainant

Versus

M/s Magic Eye Developer Private Limited
Regd. Office at: GF-09, Plaza M6,
Jasola District Centre

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Sukhbir Yadav (Advocate)
Sh. Gaurav Rawat (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 26.07.2024 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*.

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 of the project	The Plaza at 106, Sector-106, Gurugram, Haryana
2.	Project area	3.73 acres area
3.	Nature of project	Commercial Colony
4.	DTPC License no.	65 of 2012 dated 21.06.2012 Valid up to 21.06.2022
5.	RERA registered/not registered	Registered vide no. 72 of 2017 dated 21.08.2017 Valid up to 31.12.2021
6.	Application form	Undated [Page 24-32 of complaint]
7.	Unit no.	0102, first floor, tower A4 [Page 38 of complaint]
8.	Unit area admeasuring	1125 sq. ft. [Page 38 of complaint]
9.	Date of execution of buyer's agreement	07.03.2014 [Page 33 of complaint]
10.	Possession clause	9.1 SCHEDULE FOR POSSESSION OF THE SAID UNIT <i>The Developer basedcontemplates to complete the construction of the Said Building/Said Unit within a period of three years from the date of execution of this Agreement, with two grace period of six months each.....</i>

11.	Due date of possession	07.03.2018 [Note: two grace period of six months each is included being unqualified and unconditional]
12.	Total sale consideration	Rs.72,77,931/- [As alleged by the complainant on page 22 of complaint and As per Applicant Ledger dated 23.01.2025, Page 30 of reply]
13.	Amount paid by the complainant	Rs.72,77,931/- [As alleged by the complainant on page 22 of complaint and As per Applicant Ledger dated 23.01.2025, Page 30 of reply]
14.	Occupation certificate	28.11.2019 (As per DTCP website)
15.	Offer of possession	23.12.2019 [Page 56 of complaint] Note: Vide this letter, the respondent has informed the complainant that brand "CoHo" has offered to take tower A (ground floor till 4 th floor) on lease on revenue sharing basis.
16.	Possession certificate	17.01.2022 [Page 18 of reply]
17.	Apartment handover checklist	17.01.2021 [Page 23 of reply]
18.	Invitation for registration of conveyance deed letter sent by the respondent on	03.02.2020 [Page 24 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainants i.e., Rahul Prakash & Niti Gautam are law-abiding and peace-loving persons and are residents of B Ground Floor, 4/45, Wazir Hassan Road, Lucknow, Uttar Pradesh - 226001.
- II. That the respondent party i.e., Magic Eye Developers Pvt. Ltd. is a company incorporated under the companies act, 1956 having its registered office at GF - 09, Plaza M6 Jasola District Centre, Jasola New Delhi - 110025, and the project in question is known as "The Plaza at 106" situated in Sector - 106, Gurugram.
- III. That as per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said Act and is under the territorial jurisdiction of this Authority. It is pertinent to mention here that earlier the developer of the project was "Spire Developers Pvt. Ltd." and later on company was amalgamated into the present Respondent/Developer i.e., Magic Eye Developers Pvt Ltd.
- IV. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainants fall under the category of "allottee" and have rights and obligations under the Act.
- V. That in April 2012, complainants, Rahul Prakash & Niti Gautam received a marketing call from the office of the respondent, the caller represented himself as an authorized agent of the respondent company, and marketed a commercial project namely "The Plaza at 106" situated at Sector - 106, Gurugram. The complainants visited the Gurugram office and project site of the respondent with their family members. There the complainants consultant with the marketing staff of builder and got information about the project. The marketing staff of the respondent gave them a brochure, price list and allured them with a shady picture of the project. The

marketing staff and office bearers of the respondent allured the complainants with the proposed specification and assured that possession of the unit would be handed over within 36 months from the date of booking.

- VI. That, believing on representation and assurance of the complainants Rahul Prakash & Niti Gautam, booked one unit bearing No. A4 - 0102 on 1st Floor, admeasuring 1125sq. ft. and paid Rs. 2,00,000/- as the booking amount on 17.04.2012 and signed a pre-printed application form. The unit was purchased under the construction-linked plan for a sale consideration of Rs. 68,86,750/-.
- VII. That after a long follow-up, on 07.03.2014, a pre-printed, unilateral, arbitrary buyer's agreement was executed inter-se the respondent and the complainants. According to Clause 9.1 of the buyer agreement, the respondent has to give possession of the subject unit within a period of 3 years from the date of execution of this agreement. Therefore, the due date of possession as per BBA was 07.03.2017.
- VIII. That on 04.11.2014, the respondent informed the complainants regarding the amalgamation of Spire Developers Pvt. Ltd. with Magic Eye Developers Pvt. Ltd. That the respondent kept raising the demands as per the agreed payment plan and the complainants kept paying the said demands, but the respondent failed to hand over the possession of the unit on or before the due date of possession i.e., 07.03.2017. It is pertinent to note here that the complainants made several visits to the office of the respondent to get possession of their unit, but all went in vain. It is relevant to note here that the office bearers of the respondent company used to give a new date of possession every time.

- IX. That on 30.11.2019, the respondent sent a letter having the subject "intimation about the receipt of the occupation certificate and offer of possession" to the complainants. It is pertinent to mention here that the respondent did not credit the delayed possession interest with the said offer of possession and did not disclose the demand on the offer of possession.
- X. That on 23.12.2019, the respondent party sent a letter to the complainant and informed him about leasing out the premises.
- XI. That as per the statement of account dated 20.12.2021, issued by the respondent party, the complainants have paid a sum of Rs.72,77,931/- and have a credit balance of Rs. 2007/-. Thereafter, the complainants asked and requested on several occasions to provide the latest statement of account for their unit after crediting the delayed possession interest, however, the said request of the complainants was never taken into consideration by the respondent.
- XII. That the complainants made all the payments as and when demanded by the respondent party, however, the respondent has failed to give possession of the complainant's unit on or before the due date of possession nor they were paid delayed possession charges by the respondent. It is pertinent to mention here that the complainants made several attempts to get their unit, however, all went in vain.
- XIII. That since 2020, the complainants have been making efforts to get the possession of their unit. The complainants and their representative visited several times the project site of the respondent and there, they met the official staff of the respondent. Furthermore, some meetings were also held by the respondent party with complainants, however, no fruitful result ever came into existence, and all went in vain. It is pertinent

to mention here that the complainants sent numerous emails to the respondent seeking delayed possession charges as well as possession of their unit. It is pertinent to mention here that in March 2021, the respondent party had agreed to pay delayed possession charges and it was mentioned by the respondent in its email dated 23.02.2021, 25.03.2021, and 17.01.2022 that for the final settlement of the case compensation amount will be processed towards registration of conveyance deed, and in some emails it was also mentioned that the payment has already been processed. It is not incorrect to mention here that the respondent has been playing fishing games with the complainants since no amount whatsoever towards delay possession charges was ever given by the respondent nor conveyance deed was executed till today by the respondent in favour of the complainants. It is germane to mention here that the complainants have been asking to give a copy of the offer of possession letter dated 28.11.2019, which is being referred by the respondent in its email 04.12.2019, however, the respondent never provided the same to the complainants. Thereafter, many emails were exchanged between the parties regarding the date of registration of the conveyance deed, physical possession of the unit and delayed possession charges to be paid as agreed by the respondent, etc.

- XIV. It is apposite to mention here that the complainants left no stone unturned to get possession of their unit, however, it is saddening to note here that the complainants despite their efforts got nothing but the mental and financial harassment. The complainants have been following the Respondent party for a long through emails and making efforts to get possession of the allotted unit but all in vain. Despite several visits and requests by the complainants, the respondent did not give possession of

the unit. The complainants have never been able to understand/know the actual state of construction. Though the towers seem to be built up, but there was no progress observed on finishing and landscaping work and amenities for a long time.

- XV. It is pertinent to mention here that the respondent offered a handful amount on account of compensation for delayed possession and paid part amount, but later on, refused to pay the same and hold the physical possession of the unit. It is worth mentioning that at every stage the respondent used its dominant possession and caused huge financial losses to the complainants.
- XVI. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 100% of the actual cost of the unit and being ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of unit on promised time and till date, the unit is without amenities. Moreover, it was promised by the respondent party at the time of receiving payment for the unit that the possession of a fully constructed unit and the developed project shall be handed over to the complainants as soon as construction completes i.e., 36 months from the date of booking.
- XVII. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainant.
- XVIII. That due to the acts of the above and the terms and conditions of the builder buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party is

liable to compensate the complainants on account of the aforesaid act of unfair trade practice.

- XIX. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others and is prima facie clear on the part of the respondent party which makes them liable to answer this Authority.
- XX. That the cause of action for the present complaint arose in March 2014, when a unilateral, arbitrary, and ex-facie builder buyer agreement was executed between the parties. The cause of action again arose in March 2017, when the respondent party failed to hand over the possession of the unit as per the buyer agreement. The cause of action again arose on various occasions, including on: a) November 2019; b) January 2020; c) March 2021; d) January 2023; f) April 2024 and on many times till date, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Authority restrains the respondent party 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).
- a) To get physical possession of the fully developed/constructed unit with all amenities.
 - b) To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).

- c) To get an order in their favour by directing the respondent party to execute the conveyance deed of the complainants' unit at the earliest.
 - d) To get an order in their favour by directing the respondent party to refrain from charging CAM Charges.
 - e) To get an order in their favour by directing the respondent party to provide the latest statement of account for the complainants' unit.
 - f) The Complainants are also entitled to any other relief to which he is found entitled by this Authority.
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.

- i. That the present complaint, filed by the complainant, is bundle of lies and hence is liable to be dismissed. Further the complaint is also not maintainable as it doesn't disclose any cause of action for filing the complaint against the respondent.
- ii. That from the above facts it become quite evident that the cause of action if any against the respondent arose in the year 2019 when oc was received and the possession was offered. that it is humbly submitted that the alleged cause of action arose, if any, arose in the year 2019, when the Complainant was offered the possession. It is well settled that the correspondences, representations and legal notice do not extend the time of limitation. Thus the present Complaint is not time barred.

- iii. That the Agreement for allotment was made by the Complainants and, as such, the parties are bound by the terms and conditions mentioned therein. The said Application was duly signed by Complainants after properly understanding each and every term and condition contained therein including the consequences and repercussions thereof. Complainant was neither forced nor influenced by the Respondent to submit the Application and act further, accept the allotment of the said unit and make further payments. It was Complainants who after understanding the clauses and the terms and conditions signed and submitted the Application and agreed to and opted for a specific payment plan in their complete senses.
- iv. That the Complainant, who were allotted unit No. 102, 1st Floor, Tower-A4, measuring 1125 sq. ft. in Super area in the Project Plaza@106-1 was allotted for a total consideration of Rs. 73,93,000/-, are not entitled to seek and get any money from the Respondent for the following reasons:
- v. The construction of the Project has already been completed and OC was received back in 2019 and the possession was also offered in 2019 only. Also the complainants had taken the handover of the unit on 17.01.2022, and now have concealed the fact in their complaint by asking for the relief of possession
- vi. That the Complainants have not approached this Hon'ble Court with clean hands. It is submitted that the Complainants are attempting to raise non issues and that too at this belated stage in order to acquire benefits for which the Complainant are not entitled in the least.
- vii. That it is pertinent to mention here that the complainants have already taken the possession of the unit on 17.01.2022, that too after various reminders sent by the respondent. The complainants have themselves

delayed in taking possession even after it being offered in 2019 as the complainants are not the residents of India.

- viii. That also while taking the possession, the complainants have agreed that their all accounts pertaining to the said unit are now settled fully.
- ix. That the Complainant has willfully agreed to the terms and conditions of the Application and allotment and are now at a belated stage attempting to wriggle out of their contractual obligations by filing the instant complaint before this Authority.
- x. the Complainants have sought for refund of the consideration amount paid by them qua the subject unit. It is submitted that the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence and cross examination. The issues raised by the complainants cannot be addressed before this Authority, which follows a summary procedure. In view of the same, the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this Hon'ble Regulatory Authority. The Complaint is liable to be dismissed on this ground alone.
- xi. That the Complainants are not consumer since they had booked the unit in question purely for commercial purpose as a speculative investor. Infact, the Complainants are not the end user of the unit. The Complainants had invested in the Project only as an investor. The Complainants had invested in the unit in question for commercial gains, i.e. to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment

has been made for the aforesaid purpose, it is for commercial purpose and as such the Complainants are not consumer / end user.

- xii. It may be noted that liability to pay interest by promoter to allottee under Act is a penal liability, which cannot be enforced retrospectively. Promoter should be aware beforehand that if he is unable to deliver possession by the date declared by him, he will be liable to pay interest as per provisions of Act to allottee. It is settled law that penal provisions can never be applicable retrospectively. That there is no provision in the Act which affects the agreement executed between the parties prior to commencement of Act. It is submitted that agreement executed between the parties especially prior to commencement of Act has to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which do not especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence rights and liabilities of the parties including the consequence of default/default of any party have to be governed by buyer's agreement and not by the Act.
- xiii. That the Complainant after careful reading and agreeing to the terms and conditions of booking, applied for allotment of Unit in project Plaza 106-1 at sector-106, Gurugram. Pursuant to the aforesaid booking application, lay out plan and Payment plan of the Project was sent to complainant alongwith the list of Units available for allotment. As per the preference opted by the Complainant, unit No. 102, 1st Floor, Tower-A4, measuring 1125 sq. ft. in Super area in the Project Plaza@106-1 was allotted for a total consideration of Rs. 73,93,000/-. The Complainant opted for Construction Linked Payment Plan.

- xiv. But the Complainant is also chronic defaulter since, inception in making the payments and never made timely payment to the respondent builder. Hence, by the acts and omissions,
- xv. That Complainant was also informed of the construction status that the project has been completed and OC has been applied and the possession is being offered vide letter dated 30.11.2019. Various other letters and reminders including the invitation for conveyance deed were sent to the complainant.
- xvi. The Complainants inspite in receipt of various letters, as stated above for taking the possession and executing the conveyance deed and despite agreeing to the terms and conditions of agreement, that the time is the essence of the Complainant's obligations to pay the consideration of the allotted Unit in accordance with schedule of payments and take the timely possession after it has been offered, in complete breach of the material terms and conditions of the agreement has failed to fulfil its obligations on time.
- xvii. That Complainants kept slumbering over his rights till date of filling of complaint as they, themself has been in breach of the terms and conditions of the booking/ allotment since inception.
- xviii. That Complainant despite agreeing to continue with possession has failed to take over possession of the Unit on time and finally it was handed over on 17.01.2022. It is pertinent to mention here that the vide letter email dated 03.02.2020 respondent asked the complainants to come forward and execute the conveyance deed but till date despite repeated reminders and request complainant has failed to execute the conveyance deed.

- xix. That respondent has incurred losses and damages on account of wilful breach of the terms of the Agreement by the Complainant for which the Complainant is liable to pay as per terms of agreement agreed upon by him.
- xx. That the rights and liabilities of the parties including the consequence of default/default of any party have to be governed by the terms and conditions contained in the buyer agreement in the absence of buyer's agreement and not by the Act.
- xxi. That most respectfully submitted that this Authority does not have judicial or quasi-judicial powers to pass adjudicatory orders in relation to disputes between an allottee and promoter of an ongoing project on the date of commencement of Act especially in circumstances when there is no violation of any declaration given by promoter at the time of getting the ongoing project registered with Real Estate Regulatory Authority.
- xxii. It is a matter of record that construction of aforesaid project got completed in 2019 and respondent offered possession of the unit to complainant on 30.11.2019.
- xxiii. It is submitted that a brand named "Coho" contacted respondent for taking the area of the project (including complainant's unit) on lease, the respondents in good faith and benefit of all the allottees forwarded the same offer to the complainants, but the complainants failed to reply to the same also.
- xxiv. Furthermore, it is submitted that as per agreed terms of the booking and agreement it is specifically agreed upon that the respondent is not under any obligation to find the tenants for the complainants, but still the respondent in good faith were always there for the complainants.

- xxv. That vide letter dated 03.02.2020, respondent asked the complainant to pay the stamp duty charges and get the conveyance deed executed. Thereafter, reminders were also send to the complainant but till date complainant failed to execute the same.
- xxvi. That as per clause 11.1 of the agreement it was specifically agreed between the parties that respondent builder will maintain the said building and the maintenance charges will be paid by the complainant/allottee. It is most respectfully submitted that respondent duly raised the maintenance charges and till date complainant has failed to pay the same till date.
6. 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

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainant.

F.I To get physical possession of the fully developed/constructed unit with all amenities.

F.II To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession.

F.III To get an order in their favour by directing the respondent party to execute the conveyance deed of the complainants' unit at the earliest.

F.IV To get an order in their favour by directing the respondent party to refrain from charging CAM Charges.

F.V To get an order in their favour by directing the respondent party to provide the latest statement of account for the complainants' unit.

11. On 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 reliefs.

12. 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

18(1). 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 9.1 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below

9.1 Schedule for possession of the said unit

The developer based on its present plans and estimates and subject to all just exceptions/force majeure / statutory prohibitions/court's order etc. contemplates to complete the construction of the said building /said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each, unless there is a delay for reasons mentioned in clause 10.1, 10.2 and clause 37 or due to failure of allottee (s) to pay in time the price of the said unit along with other charges and dues in accordance with schedule of payments given in Annexure C as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by II or any of the terms or conditions of this Agreement.

14. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of

possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.

15. **Grace period** -As per clause 9.1 of the buyer's agreement the developer contemplates to complete the construction of the said building / said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each. The buyer's agreement was executed on 07.03.2014 along with two grace period of six months each.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.

17. 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.

18. 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., 31.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
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 is the same as is being granted to the complainant in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made regarding contravention of 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 9.1 of the agreement, the possession of the subject apartment was to be delivered within three years from the date of execution of this agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of the buyer's agreement i.e., 07.03.2014 along with two grace period of six months each, therefore due date of possession comes out to be 07.03.2018.
21. The respondent has obtained the occupation certificate on 28.11.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 07.03.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the

buyer's agreement dated 07.03.2014 to hand over the possession within the stipulated period.

22. 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 28.11.2019. The respondent offered the possession of the unit in question to the complainant only on 23.12.2019. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 07.03.2018 till the date of offer of possession plus two months i.e., 23.02.2020
23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. from the due date of possession i.e., 07.03.2018 till the date of valid offer of possession plus two months i.e., 23.02.2020 or actual handover whichever is earlier per provisions of section 18(1) of the Act read with rule 15 of the Rules after deduction of the waived off interest already granted by the respondent.
24. As per Section 11(3) of the Act of 2016, the respondent is directed to issue the specifications to the complainant. The same is reiterated below:-

11. Functions and duties of promoter:-

The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:

- (a) Sanctioned plans, layout plans, along with specifications approved by the competent authority, by display at the site or such*

other place as may be specified by the regulations made by the Authority:

(b) The stage-wise time schedule of completion of the project including the provisions for civic infrastructure like water, sanitation and electricity.

25. As per section 11(4) (1) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
26. The possession of the subject unit has already been offered after obtaining occupation certificate on 23.12.2019. So, the respondent is directed to get the conveyance deed executed within a period of one months from the date of this order.
27. The buyer's agreement was executed between the parties on 07.03.2014. As per definition clause I "CAM CHARGES" the same shall be payable by the allottee of the said unit proportionately on the super area of the said unit. The same clause is reiterated below:-

CAM Charges shall mean the charges for the Common Areas Maintenance, which shall be payable by the Allottee of the Said Unit proportionately on the Super Area of the Said Unit. The CAM Charges shall be calculated by the Developer/Maintenance Agency for providing various services including but not limited to running and maintaining the Project, manpower services like housekeeping, horticulture, security, fire fighting, maintenance crew, etc., cost of all common area consumables like electricity, power back-up, fuels, lubricants, cleaning supplies, toiletries, etc, Annual Maintenance Contracts, spares, replacements, any/all costs towards maintaining stores and insurance of plant & machinery, infrastructure, installations, equipment, Building/Project.

28. Therefore, the respondent is directed to charge the CAM charges as per the given clause.

29. The complainants have also sought a direction for issuance of the latest statement of account. However, the respondent has already placed the updated statement of account on record. In view thereof, no further direction is required in this regard.

G. Directions of the Authority

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

- i. The respondent/promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 07.03.2018 till valid offer of possession i.e., 23.12.2019 plus 2 months after obtaining occupation certificate from the competent authority i.e. 23.02.2020, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued so far shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent/promoter shall handover possession of the flat/unit and execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within one months after obtaining occupation certificate from the competent authority.

- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
31. Complaint as well as applications, if any, stand disposed of accordingly.
32. File be consigned to registry.

Dated: 31.10.2025



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory
Authority, Gurugram



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