

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

Complaint no. : 340 of 2024
Date of filing : 01.02.2024
Date of decision : 31.10.2025

Rajan Sethi
R/o: E-2243, Ansal Palam Vihar, Gurugram

Complainant

Versus

M/s Raj Darbar Assets Ltd.
Regd. Office: 303, Global Foyer, Golf Course Road,
Sector 43, Gurugram-122002

Respondent

CORAM:
Shri Arun Kumar

Chairperson

APPEARANCE:

Ms. Kanchan Kaur Dhodi
Sh. Devender

(Advocate)
(Advocate)

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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



S.No.	Particulars	Details
1.	Name of the project	"Global Foyer", Palam Vihar, Gurugram.
2.	Project area	1.980 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	Not provided
5.	Name of licensee	M/s Natural Product Bio-Tech Ltd.
6.	RERA Registered/ not registered	Not Registered
7.	Occupation certificate /Completion certificate	05.04.2018 (Page no. 87-88 of the reply)
8	Allotment Letter issued by Natural Product Bio-Tech Ltd.	17.07.2014 (Page 23 of complaint)
9.	Unit no. (serviced Apartment)	5F 516, Fourth Floor (page 28 of complaint)
10.	Area admeasuring (super area)	695 sq. ft. (page28 of complaint)
11.	Date of execution of apartment buyer agreement [Between Seema Singh, Rajan Sethi and	17.07.2014 (Page no. 27 of the complaint)

	Natural Product Bio-Tech Ltd.]	
12	Possession clause	<p><i>17. "That the Seller shall complete the construction of the Said Complex and apply for completion certificate within 36 months of signing of this Agreement (with grace/cure period of further six months) except when such delay in construction has been caused due to any of the reasons mentioned in Clause 25. In such event i.e., where the Seller completes the construction in accordance with the terms herein and applies for completion certificate, it shall be absolved of its obligations under this Agreement including the obligation to pay interest to the Allottee(s) for delay on any account".</i></p>
13	Due date of possession	<p>17.01.2018</p> <p>[as per possession clause]</p> <p>(Grace period of 6 months is allowed being unqualified)</p>
14	Total sale consideration	<p>Rs. 64,81,776/-</p> <p>(As per page 42 of complaint)</p> <p>Rs.61,31,776/- BSP</p>
15	Amount paid by the complainant	<p>Rs.65,09,905/-</p> <p>(As stated by the complainant)</p> <p>Rs. 64,40,405/-</p>

		(As per payment receipts annexed with the complaint)
16.	Notice of Offer of possession dated	22.03.2019 (Page no.85 of complaint)
17.	Solely endorsed in the name of co- applicant i.e Rajan Sethi	10.10.2022 (Page 49 of complaint)
18	Conveyance deed	Not executed

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- a. That, the Complainant got to know about the Respondent's project namely – Global Foyer, Palam Vihar, Gurugram and found the same suitable to the requirements of the Complainant. In furtherance of the same, the Complainant booked one studio service apartment in the said project. Initially, the said unit was booked jointly in the names of Seema Singh Sethi and Rajan Sethi and later vide Endorsement dated 10.10.2022 was solely endorsed in the name of Rajan Sethi.
- b. That, vide allotment letter dated 17.07.2014, the Respondent allotted one studio service apartment bearing number 5F-516 having super area of 695 sq. ft. for a Sales Consideration of Rs.64,81,776/-. Accordingly, the Complainant and the Respondent entered into an Apartment Buyers' Agreement dated 17.07.2014 in respect to the said unit. The Complainant has till date paid a total of Rs. Rs.65,09,905 duly acknowledged as received by the Respondent.
- c. That, as per Clause 23 of the Apartment Buyers' Agreement dated 17.07.2014, the Respondent was obligated to handover possession to



the Complainant within 36 months from the date of execution of Apartment Buyers' Agreement. Therefore the, due date of possession was 17.07.2017.

- d. That, the Respondent miserably failed in delivering the possession of the apartment on the due date mentioned in Apartment Buyers' Agreement and offered possession only later, vide Offer of Possession through a letter dated 22.03.2019 wherein the Respondent mentioned that Offer of Possession shall be effective only from date 15.04.2019. Complainant surrendered his car parking at the time of possession. That, on receipt of the said Offer of Possession, the Complainant immediately responded vide letter dated 11.04.2019 stating how the incorrect tax rate of 18% was being charged by Respondent in the same as against the actual service tax @ 4.5% already paid by the Complainant and sought for removal of said illegal charge.
- e. That, the complainant visited the Project site and his unit on 25.04.2019 and was shocked to see the deplorable condition of the same. Photographs evidencing the sheer incomplete status of the unit on visit on 25.04.2019.
- f. The said letter was duly accepted by the Respondent, but the Respondent failed to act and respond on the same. The Complainant, further, visited the Project site on 23.01.2020, 24.01.2020 and was shocked to see the state of the Project. The Complainant's apartment was not ready for habitation. On visit it was found that, construction material was lying in the apartment, furniture (Sofa) in living room was missing and kitchenette chimney and hot plate fittings were not fitted, bathroom fittings were missing and some installed were too dirty and not of the expected standard for the cost paid by Complainant. The Complainant wrote an email dated 24.01.2020 to the Respondent

elaborating the above, along with photographs evidencing the sad state of affairs in regard to the workmanship and condition of the apartment. The same fell on deaf ears.

- g. The Complainant was made to run pillar to post but the Respondent failed to make necessary amends in its workmanship and quality of construction. The Respondent threatened the Complainant with maintenance charges as well as holding charges without even correcting the defects in the quality of construction and provision of services at its end. That, again vide email dated 18.08.2021, the Complainant complained to the respondent about poor state of affairs even in the adjacent areas of the unit which were under renovation on account of which it was not actually possible to use the unit of the Complainant.
- h. That, instead of making the above corrections, the Respondent sent a one-sided lease contract to the Complainant which the Complainant refused to sign, on account of sheer lopsided clauses of said contract. The said refusal was conveyed by the Complainant vide email dated 30.10.2021. That, as late as year 2023, on visiting the site on 19.01.2023 and 26.07.2023, the Complainant found that the unit was still not in a functional habitable condition. A lot of construction work was still faulty and incomplete. The Corridor wall leading to the apartment of the Complainant was totally broken with clear fall posing a serious safety hazard and making the said apartment safely inaccessible. There is a gaping hole in ceiling in the unit of the Complainant, entire wall of the unit adjoining the adjacent open corridor area is 100% broken making for a dangerous fall, fixtures broken and missing, electric fixtures hanging, no amenities of a service apartments provided till date. Photographs evidencing the poor state of affairs of the unit and surrounding area post offer of possession elucidate in a thousand words

the actual deplorable, incomplete state of the Project and the unit. That it has been upheld by the Authority time and again that the unit at the time of offer should be in a habitable condition and the test of habitability is that the allottee should be able to live in the said unit within 30 days of offer of possession. In situations where the unit is not habitable the offer of possession of an uninhabitable unit cannot be considered a legally valid offer of possession even though OC may have been received by the Respondent.

- i. The Complainant further visited the Project site on 20.06.2022, 26.07.2023, 30.03.2023, 21.04.2023 and latest on 05.01.2024. Till date, apartment fittings are not complete and the electrical fittings are loosely hanging from the ceiling in the corridor leading to the apartment. Remaining floors also have construction going on in the common areas. The Complainant has time and again raised several complaints regarding the not at all habitable condition of the unit but the same has fallen on deaf ears. Further, the Complainant was informed by the representatives of the Respondent that the Respondent is in the process of doing a tie-up with a reputed hotel in regard to the service apartments of Project and would be making changes in the layout of the Project to accommodate the above change.
- j. That, even in regard to the above, there has been no formal communication on the part of the Respondent. It also been noticed by the Complainant that the Respondent is changing the layout of the Project without taking the requisite consent as required under RERA Act as mentioned above.
- k. Section 14 of the Act provides that, "(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the

competent authorities. (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make— (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee. Obligations of promoter regarding veracity of the advertisement or prospectus. No deposit or advance to be taken by promoter without first entering into agreement for sale. Adherence to sanctioned plans and project specifications by the promoter. Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc. (ii) any other alterations or additions in the sanctioned

plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

- I. That, in sheer violation of the above, the Respondent has removed the open parking and removed the food court from the layout and is constructing a cinema hall instead of the food court, as has been informed by the staff of the Respondent without taking the consent of 2/3rd allottees. That, furthermore, the Complainant has come to know that the Respondent has tied up with one, Hotel Pride Plaza and looking for other alternative hotels, without any consent of the Complainant and wishes the Complainant's unit to be used for the purpose of that Hotel. The Respondent had previously in October 2021 also sent an incomplete and vague leasing document to the Complainant which the Complainant was neither interested in signing nor signed. That, due to the above in-process tie-up major portions of the Project site have become construction zones and the Complainant is even otherwise apart from the uninhabitable state of the unit, not being able to occupy the same till date. Constant modifications are being done to the project and the unit and the project stays in perpetual construction stage and the complainant is being refused to even enter the project site, and has to face extreme hassle in order to enter and take pictures of the unit as attached. As of date, not a single residential unit is functional or habitable and all three floors of apartments are being kept locked up by the Respondent.
- m. That, the Respondent being a developer is responsible for workmanship and structural defects liability for five years. That, the developer has even after being informed about the defects in quality and



workmanship, till date not corrected the said defects in workmanship, quality/provision of services etc. Multiple complaints regarding poor quality of construction have been made by the complainant and the respondent has failed to rectify the defects.

- n. That, further goes to show that, the offer of possession was an invalid offer of possession as the same was not only accompanied with undue charges mentioned above as well as the issues of quality of construction and workmanship pointed out by the complainant time and again and also since no delay possession charges were being paid/adjusted by the Respondent in the Offer of Possession.
- o. That, furthermore, the Respondent has demanded maintenance from the Complainant even though the above defects and quality issues have not been corrected by the Respondent. The Respondent has further failed to execute a separate maintenance agreement as required under Clause 18 and Clause 21 of the Apartment Buyers' Agreement. That, the execution of a separate maintenance agreement was a pre-requisite to charging of maintenance by the Respondent wherein the Respondent had to explain the facilities being provided and charged for. There has been a sheer failure on the part of the Respondent to execute the same and the same being a pre-requisite, the Respondent cannot claim maintenance without executing a proper agreement in that regard. Clause 18 of the Apartment Buyer's Agreement provides that: "That the possession of the said premises shall be granted to the Allottee(s) only after all the payments as envisaged in this agreement are made and the maintenance agreement is signed with the seller or its nominated maintenance agency...." Clause 21 of the Apartment Buyer's Agreement provides that: "That with respect to the maintenance of the said complex and its common area, a separate maintenance agreement shall be

executed on or before handing over the possession of the said premises between the Allottee(s) and the seller or any maintenance agency nominated by the seller and the Allottee(s) shall not be entitled to take the possession till such time, the maintenance agreement is executed in the standard format as may be specified by the seller or the nominated maintenance agency. Further, the Allottee(s) shall pay to the seller/nominated maintenance agency an interest free refundable maintenance security (herein after referred to as the "IFMS"), the rate as decided by the seller/ nominated agency at the time of issuance of notice for taking possession of the said premises. The payment of above referred IFMS shall be condition precedent for grant of the physical possession of the said premises. The IFMS shall be paid through cheque / demand draft in favour of seller / nominated maintenance agency. The maintenance charges shall become due and payable from the date of issue of notice of possession by the seller. The Allottee(s) shall separately pay to the seller / nominated maintenance agency specified amount for getting the said premises insured and this amount shall be in addition to the maintenance charges. The maintenance agreement will exhaustively define the scope of maintenance of various services and facilities to be provided by the seller / nominated maintenance agency and the charges payable by the Allottee(s) in respect thereof." The alleged demands for maintenance issued without execution of maintenance agreement, are illegal and void ab initio. It has been held by the Hon'ble Supreme Court in the case titled Utpal Trehan Versus DLF Home Developers Ltd. MANU/SC/0845/2022 that, "no principal agent relationship has been established between the builder and the association as regards the Maintenance Agreement entitling the builder to claim and receive maintenance charges. The builders, at best is a

facilitator in organizing a maintenance agency..... But without any claim from the entity, who are to render maintenance services and charge for the same, in our opinion, the two statutory fora ought not to have directed allottee to make payment of maintenance charges."

- p. It is thus apparent that there has been a sheer failure on the part of Respondent to carry out its obligations and the same is a violation of Section 11(4) of the RERA Act. As per Section 11(4) (a), The promoter shall 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: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.
- q. The Complainant has approached this Authority in view of the above facts and circumstances in order to refrain the Respondent from shying away from its responsibility of paying delay possession charges to Complainant, and correcting the defects in workmanship and to refrain the Respondent from illegally charging maintenance charges in view of the violations committed by the Respondent.

C. Relief sought by the complainant

4. The complainant has sought the following reliefs:
- a. Direct the Respondent to pay Delay Possession Charges to the Complainant for the period starting from 17.07.2017 i.e., due date of

possession till the date of actual valid offer of possession to the Complainant.

- b. Direct the respondent to execute a separate maintenance agreement in lines with Clause 18 and Clause 21 of the Apartment Buyers' agreement and direct the Respondent to refrain raising bills of maintenance prior to valid execution of said maintenance agreement.
- c. Direct the respondent to rectify the defects in its construction as mentioned in detail in the complaint such as gaping holes in the ceiling to be repaired, broken walls, hanging electric fittings, broken bathroom and kitchen fittings etc.

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 has contested the complaint on the following grounds.

- a. That the complainant along with sole/first applicant namely Seema Singh Sethi after checking the veracity of the project namely Global Foyer, Palam Vihar, Gurugram had applied for allotment of a unit vide its booking application form dated 29.12.2013 and deposited part amount towards the total sale consideration. That allottee agreed and is bound by the terms and conditions of the booking application form. The complainant had opted Construction Link Plan. It is stated that the allottees had paid only Rs.5,00,000/- at the time of the booking and thereafter the respondent had sent a first due demand letter dated 03.02.2014 for an amount of Rs.7,82,433/- as per the opted payment plan i.e. within a period of 60 days of the booking and the said demand had to be paid on or before 01.04.2014 but the complainant had paid the said demand after the due date i.e. on 07.04.2014.

- b. That the respondent had sent a second due demand letter dated 22.04.2014 for an amount of Rs.6,45,116/- as per the opted payment plan i.e. within a period of 120 days of the booking and the said demand had to be paid on or before 01.06.2014 and the complainant had paid the said demand on dated 30.05.2014. That based on the said application, the respondent vide its provisional allotment offer letter dated 17.07.2014 allotted the allottee unit no.-5F-516, having tentative super area 695 Sq. Ft. in the commercial complex "Global" Foyer, Palam Vihar, Gurugram on the basic sale price of Rs.8822.70/- per Sq. Ft. inclusive EDC/IDC and the said saleable price excluding the other charges payable by the allottees towards one car parking, also excluding PLC (if any) and the allottee also agreed to and confirmed that all duties, Tax, levies i.e., GST, Surcharge, service charges shall be payable additional to the total basic sale prices etc. That the Buyer's Agreement dated 17.07.2014 was executed between the allottee and the respondent and the parties are bound by the terms and conditions of the said agreement. It is pertinent to mention herein that the RERA Act, 2016 was not in force when the allottee had booked the unit with the respondent and the provisions of the same cannot be enforced retrospectively.
- c. That the respondent kept on raising payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as per the payment plan. However, it is pertinent to mention herein that the respondent had raised the third installment due letter on 29.11.2014 for the net payable amount of Rs.6,08,429/- including service tax. However, the complainant failed to remit the due amount despite reminders and the said installment part payment paid on 31.12.2014 and 08.01.2015.

- d. That the respondent sent the fourth payment installment demand as per the agreed payment plan and the same was due on 15.05.2015 for the net payable amount of Rs.6,34,679/-. However, the said demand has paid in parts payment receipt dated 03.06.2014 and 08.06.2015 by the complainant only after the due date despite reminders. That the respondent sent the fifth reminder letter on dated 07.07.2015 of the balance payment of Rs.1,49,679/- the payment installment demand as per the agreed payment plan and the same was due on 15.05.2015.
- e. That the respondent sent the payment installment demand as per the agreed payment plan along with the previous balance amount and the same was due on 20.08.2015 for the net payable amount of Rs.7,89,274/-. However, the said demand has paid vide payment receipt dated 23.09.2015 by the complainant only after the due date despite reminders. That the respondent sent the payment installment seventh demand letter dated 01.01.2016 as per the agreed payment plan and the same was due on 20.01.2016 for the net payable amount of Rs.6,39,851/-. However, the said demand has paid in parts vide payment receipt dated 13.01.2016 and 14.01.2016 by the complainant only after the due date despite reminders.
- f. That the respondent sent the payment installment eighth demand letter dated 30.03.2016 as per the agreed payment plan and the same was due on 20.04.2016 for the net payable amount of Rs.5,67,388/-. However, the said demand has paid in parts vide payment receipt dated 06.06.2016 and 07.06.2016 by the complainant only after the due date despite reminders.
- g. That the respondent sent the payment installment demand letter dated 01.07.2016 as per the agreed payment plan and the same was due on 25.07.2016 for the net payable amount of Rs.5,68,078/-. That the

respondent sent a reminder letter dated 27.10.2016 along with the next due installment i.e. total amount of Rs.9,75,965/- as per the agreed payment plan and the same was due on 25.11.2016. However, the said demand has paid in parts vide payment receipt dated 24.01.2017, 03.03.2017, 06.03.2017 and 29.03.2017 by the complainant only after the due date despite reminders.

- h. It is stated that the allottees was irregular in making the payments of the booked unit as well as the other allottees were also not making the payments as per the demand raised by the respondent and due to the said reason, the respondent had faced several difficulties for completing the project on time but the respondent after faced the all challenges had raised the construction of the said project.
- i. That yet again, as per the terms and condition of the allotment and the mutually agreed payment plan, the respondent sent the payment demands to the complainant for the due amount. However, despite reminders the complainant failed to make the payment and the due amount was again adjusted in the next demands as Arrears. It is stated that the clause no.-16 of the Buyers Agreement is reproduces as under "The sale deed/conveyance deed in respect of the said unit shall, however, be executed after all the outstanding payments under various heads as specified herein including in the Annexure-II have been made full.
- j. It is stated that as per the clause no.-18 of the Buyer's Agreement the possession shall be handed over after making the full payment. The clause no.-18 reproduce as under "The possession of the said premises shall be granted to the allottee only after the payment as agreed in this agreement are made and the maintenance agreement is signed with the seller or its nominated agency as the event the allottee has made all the

payment under this agreement and executed the maintenance agreement and the statutory regulations for handing over the possession are not complete, the allottee, if so desire may request for temporary possession of the said premises for undertaking and the seller may at its sole discretion accede to such request".

- k. The possession of the unit is supposed to be offered to the complainant in accordance with the agreed terms and conditions of the Buyer's Agreement. It is submitted that the as per clause no.-17 of the Buyer's Agreement "the construction and apply for the completion certificate within 36 months from this agreement with the grace period of six months except when such delay in construction has been caused due to any reasons mentioned in clause no.25 in such event i.e., when the seller complies the conditions in accordance with the terms herein and applies for completion certificate. It shall be absolved of its obligation under the agreement including the obligation to pay interest to the allottee(s) of delay or any account".
- l. That the respondent had intimated the construction status to the complainants. The respondent has completed the construction of the project in which the unit allotted to the complainant is located. That the complainant failed to adhere to his contractual obligations as per the Buyer's Agreement.
- m. That the respondent intimated and offered the possession to the complainant about the offer of possession of the commercial unit no.- 5F-516 at Global Foyer, Palam Vihar, Gurugram on dated 22.03.2019 and along with this net payable amount Rs.8,55,675/- + Rs.69,500/- with the bifurcation amount of the all heads, was sent by the respondent. It is stated that the allottees had made a written request on dated 23.12.2019 for not taking car parking along with the booked unit and



the same has been approved and the amount of the car parking has been adjusted in the actual value of the booked unit and the said intimation has been sent to the allottees on the registered email ID of the allottees.

- n. That the allottees have paid the Interest free maintenance security amount of Rs.69,500/- vide payment receipt dated 08.01.2020, which is the admission of the allottees, that the complex is in running condition and the maintenance has been started from the allottees. That the allottees has paid an amount of Rs.4,30,862/- vide payment receipt dated 08.01.2020 to the respondent only after the due date despite several reminders. That it is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by allottees including the complainant on time and also due to the events and conditions which were beyond the control of the respondent and which hampered the construction and progress of the project.
- o. Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labor. The Reserve Bank of India has published reports on impact of Demonetization. In the report- Macroeconomic Impact of Demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.
- p. It is also submitted that the respondent again sent a reminder letter dated 15.01.2020 to the complainant for taking the possession of the booked unit and also informed that the said commercial complex is in

running condition since 01.03.2019 and the maintenance of the said complex has been started since 01.03.2019 and also requested to take the possession of the booked unit and pay the pending dues of Rs.3,11,638/-.

- q. That as mentioned above, the Occupation Certificate has been duly received on 05.04.2018 after completion of the project by the respondent. Furthermore, upon receipt of the said Occupation Certificate, the respondent vide letter dated 22.03.2019 has duly intimated the complainant in this regard and have also simultaneously invited the complainants to 'Take/offer the possession of his unit as per the agreed terms and conditions of the Apartment Buyer's Agreement so that the unit of the complainants may be ready for occupation.
- r. It is also submitted that the respondent has sent a payment due reminder dated 15.01.2020 to the complainant and also intimated that the said delay charges shall be applicable at the time of unit transfer/cancellation/possession etc. It is also stated that the complainant is the person who has not paid the demanded installment on time and being as a valued customer the respondent did not cancel the unit of the complainant, but the complainant is the person who have file the present complaint before this Hon'ble Authority instead of paying the due amount upon him. Hence the present complaint is not maintainable in its present form.

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

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, 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

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) 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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainant.

- F.I. Direct the Respondent to pay Delay Possession Charges to the Complainant for the period starting from 17.07.2017 i.e., due date of possession till the date of actual valid offer of possession to the Complainant.**
- F.II Direct the respondent to rectify the defects in its construction as mentioned in detail in the complaint, such as gaping holes in the ceiling to be repaired, broken walls, hanging electric fittings, broken bathroom and kitchen fittings etc.**
12. The Complainant booked Service Apartment No. 5F-516, situated on the 4th Floor, in the project "Global Foyer", located at Palm Vihar, Gurugram. A Builder Buyer Agreement (BBA) was executed between the parties on 17.07.2024. The total sale consideration was Rs. 64,81,776/-. The Complainant has paid a sum of Rs. 65,09,905/- to the respondent, which is in excess of the agreed sale consideration. The Complainant states that he visited the Project on 25.04.2019 and was shocked to witness the deplorable and incomplete condition of the same. Photographs taken during the visit clearly evidenced that the unit was far from complete and not ready for occupation.
13. The Complainant immediately brought the deficiencies to the notice of the Respondent. Though the communication was duly received by the Respondent, no corrective action was taken. Thereafter, the Complainant again visited the Project site on 23.01.2020 and 24.01.2020 and was once again shocked to observe that the apartment was not ready for habitation. It was found that, Construction material was lying inside the apartment; Furniture (sofa) in the living room was missing; Kitchenette chimney and hot plate fittings were not installed; Bathroom fittings were missing and some

installed fittings were extremely dirty and substandard considering the cost paid by the Complainant; Overall workmanship was grossly deficient.

14. The Complainant addressed an email dated 24.01.2020 to the Respondent detailing the above deficiencies along with photographic evidence. However, the Respondent failed to respond or take remedial steps. Instead of rectifying the defects, the Respondent began threatening the Complainant with demands of maintenance charges and holding charges without first curing the construction defects and service deficiencies.
15. Again, vide email dated 18.08.2021, the Complainant informed the Respondent that adjacent areas to his unit were under renovation, rendering the apartment unusable and unsafe. Instead of addressing these serious concerns, the Respondent sent a one-sided lease agreement containing highly lopsided clauses, which the Complainant refused to sign. The refusal was duly communicated via email dated 30.10.2021.
16. Even as late as 2023, upon visiting the site on 19.01.2023 and 26.07.2023, the Complainant found that the unit continued to remain incomplete and uninhabitable. The following grave defects persisted:
 - Corridor wall leading to the apartment was completely broken, posing a serious safety hazard;
 - Gaping hole in the ceiling of the unit;
 - Entire wall adjoining the open corridor area was fully broken, creating a dangerous fall risk;
 - Broken and missing fixtures;
 - Electrical fittings hanging dangerously;
 - Absence of promised amenities of service apartments;
 - Ongoing faulty and incomplete construction work.
17. Photographs taken during these visits clearly demonstrate that even post alleged offer of possession, the Project and the Complainant's unit were in a deplorable and unsafe condition.

18. 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

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."

19. Clause 17 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

17. Possession

*"That the Seller shall complete the construction of the Said Complex and apply for completion certificate within **36 months of signing of this Agreement (with grace/cure period of further six months)** except when such delay in construction has been caused due to any of the reasons mentioned in Clause 25. In such event i.e., where the Seller completes the construction in accordance with the terms herein and applies for completion certificate, it shall be absolved of its obligations under this Agreement including the obligation to pay interest to the Allottee(s) for delay on any account".*

20. **Admissibility of delay possession charges at prescribed rate of interest:**

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.

21. 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.
22. 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%.
23. 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;"*

24. 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.
25. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the Respondent is in contravention of Section 11(4)(a) of the Act by not handing over possession by the due date as per the Agreement. By virtue of Clause 17 of the Apartment Buyer's Agreement executed between the parties on 17.07.2014, possession of the subject apartment was to be delivered by 17.01.2018, calculated from the date of execution of the Agreement, inclusive of the grace period of six (6) months as stipulated therein.
26. In the present case, the purported offer of possession made by the Respondent does not qualify as a valid offer in terms of the settled principles laid down by the Authority, as the unit was neither in a habitable condition nor free from serious structural and safety defects at the time of offer. The existence of broken corridor walls posing safety hazards, a gaping hole in the ceiling, completely damaged adjoining walls, hanging electrical fixtures, missing fittings, incomplete works, and non-functional amenities clearly establishes that the apartment was not capable of being occupied. Such deficiencies go far beyond minor defects and render the unit uninhabitable. Consequently, the alleged offer of possession is invalid in law, and the Respondent's liability to pay delay charges continues until a lawful and valid offer of possession is made in compliance with the Flat Buyer's Agreement and the provisions of the Act.
27. Since the purported offer of possession is not valid in the eyes of the law and the unit is admittedly incomplete and uninhabitable, the Complainant is

entitled to delay possession charges from the due date of possession until the actual handing over of lawful and habitable possession.

28. Accordingly, non-compliance with the mandate contained in Section 11(4)(a) read with the proviso to Section 18(1) of the Act on the part of the Respondent stands established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from the due date of possession, i.e., 17.01.2018, till actual handing over of possession, in accordance with Section 18(1) of the Act read with Rule 15 of the Rules. (Inadvertently mentioned on the Pod dated 31.10.2025 DPC allowed from the due date of possession till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier).
29. Accordingly, in terms of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the applicable Rules, the Respondent is directed to pay interest to the Complainant on the entire paid-up amount at the prescribed rate of 10.85% per annum for the period of delay, calculated from the due date of possession till the actual date of handing over of valid and habitable possession of the unit. The Respondent is further directed to hand over possession of the unit to the Complainant strictly in a complete and habitable condition in accordance with the provisions of the Act and the terms of the Agreement.
30. The Respondent/Promoter is hereby directed to execute and register the Conveyance Deed in respect of the subject unit in favour of the Complainant, in accordance with the provisions of Section 17 of the Real Estate (Regulation and Development) Act, 2016 and the terms of the Apartment Buyer's Agreement. The said Conveyance Deed shall be executed and registered after handing over valid, lawful, and habitable possession of the unit and upon completion of all contractual and statutory obligations.

31. In respect of the relief pertaining to the Maintenance Agreement sought by the Complainant, the Authority is of the view that the Respondent is entitled to collect advance maintenance charges strictly in accordance with the terms and conditions of the Builder Buyer's Agreement executed between the parties.

G. Directions of the Authority

32. 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 interest to the complainant 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., 17.01.2018 till actual handing over of Possession in terms of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- ii. The complainant is also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The Respondent/Promoter is hereby directed to execute and register the Conveyance Deed in respect of the subject unit in favour of the Complainant, in accordance with the provisions of Section 17 of the Real Estate (Regulation and Development) Act, 2016 and the terms of the Apartment Buyer's Agreement. The said Conveyance Deed shall be

executed and registered after handing over valid, lawful, and habitable possession of the unit and upon completion of all contractual and statutory obligations.

- v. Further the Respondent is entitled to collect advance maintenance charges strictly in accordance with the terms and conditions of the Builder Buyer's Agreement executed between the parties.
- vi. The respondent/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement.

33. The complaint and application, if any, stands disposed of.

34. File be consigned to registry.

Dated: 31.10.2025


(Arun Kumar)

Chairman
Haryana Real Estate Regulatory
Authority, Gurugram