

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

Complaint no. : 5594 of 2025
Date of Decision : 19.02.2026

Inderdeep Singh Khurana

Through SPA Holder Gagan Deep Singh
R/o- BF-17, Tagore Garden, West Delhi, New Delhi-
110027

Complainant

Versus

1. M/S KNS Infracon Private Ltd.

Office at: - 517A, Narainmanzil, 23, Barahama
Road, Connaught Place, New Delhi-110001

2. M/S Tashee Land Developers Pvt. Ltd.

Office at: - 3rd floor, Haarsha Bhawan, Plot
no.13-29, E-Block, Connaught Place, New Delhi-
110001

Respondents

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Ms. Prerana (Advocate)
Rishabh Jain (Advocate)
None

Complainant
Respondent no.1
Respondent no.2

ORDER

1. The present complaint dated 14.11.2025 has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the 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 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.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd
6.	RERA Registered/not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Extension of RERA registration	RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022
9.	Validity of extension	30.06.2025 for both the phases, phase-I (tower A to G) for phase- II (tower H to J)
10.	Unit no.	904, 9 th floor, tower-H (As per page no. 36 of the complaint)
11.	Unit measuring	1478 sq. ft. (super area) (As per FBA at page no. 36 and SOA dt. 07.07.2025 at pg.73 of the complaint)
12.	Revised building plan	07.06.2012 (As taken from another complaint of the same project)



13.	Date of execution of flat buyer's agreement	14.07.2017 (As per page no. 34 of the complaint)
14.	Possession clause	Clause 2.1 <i>Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate period of 48 months from the date of sanction of building plans of the said colony. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 48 months for applying and obtaining OC in respect of the colony from the concerned authority.</i> (As per page no. 43 of the complaint)
15.	Total sale consideration	Rs.57,54,480/- (As per FBA at pg.38 of complaint excluding IFMS, Poss. Charges, other charges, interest, taxes, etc.,) Rs.77,28,599/- (As per SOA on page no. 73 of the complaint including IFMS, Poss. Charges, other charges, interest, taxes, etc.)
16.	Total amount paid by the complainant	Rs.60,44,142/- (As per SOA on page no. 73 of the complaint)
17.	Due date of delivery of possession	07.12.2016 (Note: Due date to be calculated 48 months from the date of sanction of building plans i.e., 07.06.2012 plus grace period of 180 days)

B

18.	Occupation certificate	Not obtained for concerned unit (As per DTCP website)
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made following submissions by filing the present complaint: -

- i. That the respondents floated an advertisement on various platforms and medium for construction of a housing colony in the name of "Capital Gateway". The promoter's promised world class amenities and timely completion/execution of the project etc. The location of the project was 110A/111, Gurugram, Haryana, spread over an area of 10.462 acres. That the license was granted in favour of the respondent no.2 bearing no 34 of 2011 dated 16th April 2011 for the said project. Thereafter enactment of the Real Estate (Regulation and Development) Act 2016 and the framing of Rules under the Haryana Real Estate (Regulation and Development) Rules 2017 the project came within the ambit of the aforesaid laws.
- ii. That flat no. H-904 was bought on resale through the builder by Mr. Inderdeep Singh. The builder issued a transfer letter dated 20.01.2012 transferring all rights and interests in the residential Flat bearing no. 904 in Tower 'H' 9th floor, unit type 2 BHK measuring 1478 sq. ft. (approx.) in the group Housing Project, "Capital Gateway" at Sector 111, Gurgaon. The same was under construction link payment plan.
- iii. An increased area letter was issued by the builder dated 28 Apr 17. No basis or explanation for the same was given by them. No concurrence was taken from the complainant regarding the



increased super area. The complainant objected to the respondents to the increased area and also bringing out the fact that the increased area as per FBA was to be settled at the time of possession. However, no reply was received from the Respondent. An additional demand of ₹1,02,592/- was made by the builder which was duly paid by the complainant.

- iv. The flat buyer's agreement was executed by the promoter thereafter was on 14th July 2017. Vide Para 1.2 the sale price was fixed at a total of ₹57,54,480/-. This sale consideration was inclusive of basic price, external development charges, infrastructural development charges, preferential location charges, if any, club membership charges and for exclusive right to use of the one covered parking.
- v. That the respondents had agreed to deliver the possession of the flat within 48 months from sanctioning of building plan (07.06.2012) which comes to 07.06.2016, excluding an extended grace period of 180 days (which is specifically for the purpose of applying and obtaining the occupation certificate in respect of the colony from the concerned authority).
- vi. That it is relevant here to comment on the possession clause of the FBA wherein the possession has been subjected to all kinds of terms & conditions. Even though the complainant may not be in default under any provisions of the FBA and its compliance with all provisions, formalities & documentation as prescribed by the promoters but the drafting of this & other clauses with incorporation of conditions which are vague and uncertain but are also heavily loaded in favour of the promoters and against the



complainant that even a single default by him in fulfilling formalities etc. as prescribed by the respondent(s) may make the possession clause irrelevant for the purpose of the complainant and the commitment date for handing over possession lose its meaning. The incorporation of such clauses in the FBA by the respondent(s) are just to evade the liability towards timely delivery of the unit and deprive the complainant of his right accruing after delay in possession. This is just to highlight as to how the respondent(s) have used their dominant position and drafted such mischievous clause in the agreement and the complainant was left with no option but to sign on the dotted lines.

- vii. That the complainant used to regularly ask the respondent's staff about the progress of the project, and they completely kept the complainant under dark about the actual and true status of the construction of the said unit and kept saying that the flat would be ready as per the commitments and the promises made to the complainant and kept raising demands for payments which the complainant kept paying.
- viii. When the complainant visited the site, he was shocked & surprised to see that construction work was not going on as per plan. He saw that there was just one odd person present in the site apart from 2-3 guards. No one was there to address the queries of the complainant. Telephone calls were mostly unanswered.
- ix. That there was no doubt left of the fact that it was appearing that the respondents had no intentions of keeping their promises. There seemed to be an intent to play fraud upon the complainant. The only intention of the respondents were to take payments for



the flat without completing the work and not handing over the possession on time. The respondent's mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving all the payments on time for various demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls & personal visits of the complainant, the respondents have failed to deliver the possession of the allotted flat to the complainant within stipulated period.

- x. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondents to deliver the flat within 48 months from the date of sanction of the building plan which comes to 07.06.2016 but was not completed within time for the reasons best known to the respondents, which clearly shows that the ulterior motive of the respondents were to extract money from the complainant fraudulently.
- xi. That due to this omission on the part of the respondents the complainant has been suffering from disruption on his living arrangements, mental torture, and agony and also continues to incur severe financial losses. This could have been totally avoided if the respondents had given possession of the flat on time. The respondents keep sending update messages in emails that soon the flat will be ready for possession, and they are applying for OC. However, all these communications were just to give a false sense of hope and to mislead the complainant by the respondents.
- xii. The respondent(s) merely want to escape their liability just by mentioning a compensation clause in the agreement. It can be seen



clearly that the respondent(s) have incorporated certain clauses making it a one-sided buyer's agreement and offered to pay a sum of ₹5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondents' charges @ 18% to 24% per annum compounded interest on delayed payment. Para 15 of 'The Haryana Real Estate (Regulation and Development) Rules 2017' which says that the interest rate shall be the State Bank of India (Referred to as SBI hereinafter) highest marginal cost of lending rate (Referred to as MCLR hereinafter) + 2%.

- xiii. That on the ground of parity and equity the respondents should also be subjected to pay the same rate of interest as he has charged the complainant. Hence the respondents are also liable to pay interest on the amount paid by the complainant from the promised date of possession till the flat is actually delivered to the complainant @24% or SBI MCLR +2%, as this authority deems fit, on the amount paid by the complainant from the promised date of possession till the flat is actually delivered to the complainant.
- xiv. That the respondents received financial assistance from SWAMIH, a venture of the State Bank of India to provide funds for projects that are stuck for various reasons. It is worth mentioning that the respondents have offered the flat of the complainant towards collateral security and mortgaged their flat without prior intimation or consent from the complainant. The respondent(s) have put up a condition that the complainant has to obtain a 'No Objection Certificate' from SWAMIH which is not only against the



FBA entered between the parties but also puts a further challenge before the complainant to get NOC in view of the illegal demands raised by the respondent(s). The aforesaid clause and act of the respondents are arbitrary, unreasonable & unfair. This is strongly objected to.

xv. As per the BBA the laid down payment plan is as under:

With Application	₹ 4,40,725/-
Within 45 days of the Application	₹ 6,61,088/-
On the Commencement of Excavation	₹ 7,03,715/-
On the casting of Plinth Beam	₹ 5,85,225/-
On the casting of Ground Floor Slab	₹ 7,03,715/-
On the casting of 1 st Floor Slab	₹ 5,85,225/-
On the casting of 6 th Floor Slab	₹ 4,40,725/-
On the casting of 12 th Floor Slab	₹ 4,40,725/-
On the casting of Internal Brick Work & Plaster	₹ 5,92,548/-
On completion of external plaster	₹ 3,75,395/-
On offer of Possession	₹ 3,36,245/-
TOTAL	₹ 58,65,331/-

- xvi. Since as per the BBA the cost of the flat is mentioned ₹57,54,480/- This sale consideration was inclusive of basic price, external development charges, infrastructural development charges, preferential location charges, if any, club membership charges and for exclusive right to use of the one covered parking. As per the breakdown of calculation provided in Annexure 'D' - Payment Plan in the BBA (Table above) the cost of the flat comes to ₹ 58,65,331/- . There is a difference between the amount demanded vs agreed to of ₹1,10,851/-. For purpose of calculation the amount is being taken as ₹ 57,54,480/-. This also matches with the statement of Account dated 07 Jul 2025.
- xvii. The respondent no.1 vide letter dated 07 July 25 have enumerated the following in Para 3 under the Head - Total Sale Value of the Flat.



This mentioned part of the table is broken up into two parts (Part A & B) for sake of easier understanding & convenience. Part A of the table is as follows:

Sr.No.	PARTICULARS	AMOUNT
A.	Basic Sale Price (BSP)	₹ 45,07,900/-
B.	PLC	₹ 2,95,600/-
C.	Car Parking	₹ 2,75,000/-
D.	Club Membership	₹ 1,50,000/-
E.	EDC/IDC	₹ 5,25,980/-
TOTAL :-		₹ 57,54,480/-

- xviii. An amount of ₹2,75,000/- has been billed for car parking. This is illegal and should be struck off, an amount of ₹1,50,000/- has been billed toward the same. The club is not existing. Hence the billing of these charges are not justified till the club is ready & operational.
- xix. Part B of the ibid table comprising of additional charges is billed as follows:

Sr.No.	PARTICULARS	AMOUNT
A.	IFMS	₹ 1,10,850/-
B.	Possession Charges	₹ 5,91,200/-
C.	Other Charges (Transfer)	₹ 3,70,462/-
D.	Interest	₹ 4,74,099/-
E.	Service Tax / Value Added Tax (VAT) / Goods & Services Tax (GST)	₹ 4,27,508/-
TOTAL :-		₹ 19,74,119/-

- xx. The respondent no.1 has billed the applicant an interest free security deposit @75/- per sq. ft. amount being due brought out as ₹1,10,850/-. The respondent(s) have not obtained or received the OC for this tower. Hence the charges levied by the respondents are illegal and should only be taken when full OC is available. As per BBA the mentioned amount on offer of possession is supposed to be ₹ 3,36,245/-. Now sudden increase of possession charges to ₹



5,91,200/- are absolutely illegal and are also not mentioned in the BBA. An amount of ₹3,70,462/- under the head is absolutely illegal. As due process of transfer was followed. An amount of ₹ 4,74,099/- has been billed under this head. This billing is arbitrary and cannot be imposed on the applicant when the respondent(s) themselves are at default for not handing over the possession of the unit till date which is now much beyond the due date as per the BBA.

- xxi. That the complainant has requested the respondents several times telephonically and made numerous personal visits to the offices of the respondent to find out the factual position of the flat and date of completion. That, the respondents have breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondents have committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the complainant per the provisions of the Act.
- xxii. The respondent(s) till now have only received Partial OC vide Memo No. ZP-723/JD(RD)/2024/32566 Dated 24-10-2024 for Tower - A,B,C,D,E,F,G & Ors. However, OC for this tower has not been received till date.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondents to pay delayed penalty to the complainant on completion of 48 months from the date of approval of the building plan (07.06.2012) which comes to 06.06.2016 till actual date of handing over of possession.



- II. The default interest charged by the respondent(s) is illegal and needs to be refunded in toto. The respondent(s) are liable to refund the charged interest amount in full, charged from the complainant with interest from the date of remittance till finally paid @ 24% or @ SBI MCLR +2% as the authority may deem fit.
- III. The respondent should be permanently restrained from undertaking any action that results in the cancellation of the complainant's flat or engaging in any act that undermines, circumvents, or adversely affects the complainant's rights, interests, and claims.
- IV. The respondent must be prohibited from creating any third-party rights over the property, ensuring that no external claims interfere with the complainant's lawful ownership.
- V. The lines, "The Project continues to be mortgaged to the fund and a No Objection Certificate (NOC) will be required from the Fund before sale, handover, possession, or registration of any home unit in the Project," as mentioned in the quarterly updates of September 2022 to June 2023, as well as all subsequent quarterly updates, be declared unlawful, illegal, inconsequential in terms of section 11 (4) (h) of RERA Act of 2016, thereby restraining the respondent from acting thereupon or creating any pre-requisite condition of obtaining NOC from SWAMIH or any other agency in any way whatsoever and give the rightful possession directly to the complainant without creating any hindrances.
- VI. To set aside and cancel the arbitrary charges pertaining to Car parking (₹2,75,000/-) as mentioned in FBA.



- VII. To set aside the Club Membership charges of ₹1,50,000/- as mentioned in FBA till completion of Club.
- VIII. To set aside and cancel the arbitrary charges termed as Possession charges of ₹5,91,200/- vide letters dated 07.07.25.
- IX. To set aside & cancel the arbitrary Interest Charges (₹4,74,099), VAT / Service-Tax / GST ₹4,27,508/- .
- X. The respondent(s) are liable not to charge anything extra which is not a part of the FBA or contrary to Rule 8 of the RERA Rules, 2017 pertaining to 'Agreement for Sale'.
- XI. The respondent be directed not to make any fresh demands whatsoever and carry out a full & final settlement.
- XII. The respondent be directed and restrained from charging any payment towards super area.
- XIII. The respondent(s) are liable to charge only as per the carpet area and not as per super area. The excess amount needs to be refunded to the complainant. The respondent(s) are liable to refund this excess amount with interest @ 24% p.a., OR SBI highest MCLR +2% as this court may deem fit till the date of refund.
- XIV. The respondent should be held guilty of violation of the provisions of Section 8, Section 11(4)(h), Section 15 of RERA Act and Rule 8 of the RERA Rules, 2016 and exemplary penalty be imposed.
- XV. That any legal payment due to the respondent, if applicable, be offset against the delayed penalty interest payable to the complainant, ensuring a fair and equitable adjustment of financial obligations.



- XVI. To award compensation on account of mental agony, despair and giving a false sense of hope causing emotional harassment to the complainant of ₹10,00,000/-.
- XVII. To award compensation on account of litigation expenses of ₹5,00,000/-.
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.
6. The respondent no.1 put in appearance through its counsel and marked attendance on 27.11.2025 and on 18.12.2025. Despite specific directions for filing of reply, the respondent no.1 has failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of reply in the matter. The respondent no.2 neither put in appearance nor filed reply. Therefore, in view of above, the defence of the respondent no.1 was struck off and respondent no.2 was proceeded ex-parte vide proceedings dated 19.02.2025.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

D. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

D.1 Territorial jurisdiction



9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.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 complainant at a later stage.

E. Findings of Authority on the reliefs sought in the complaint:

- E.I. Direct the respondent to pay delayed penalty to the complainant on completion of 48 months from the date of approval of the building plan (07.06.2012) which comes to 06.06.2016 till actual date of handing over of possession.**



E.II. The default interest charged by the respondent(s) is illegal and needs to be refunded in toto. The respondent(s) are liable to refund the charged interest amount in full, charged from the complainant with interest from the date of remittance till finally paid; @ 24% or @ SBI MCLR +2% as the authority may deem fit.

E.III. That any legal payment due to the respondent, if applicable, be offset against the delayed penalty interest payable to the complainant, ensuring a fair and equitable adjustment of financial obligations.

12. The above-mentioned reliefs E.I to E.III 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.
13. The complainant applied for allotment in a group housing project i.e., "Capital Gateway" situated in sector-111, Gurugram being developed by the respondent. The complainant was allotted unit bearing no. 904, 9th floor, tower-H, admeasuring super area 1478 sq. ft. in the said project vide flat buyer's agreement executed between the parties on 14.07.2017 for a total consideration of Rs.77,28,599/- [including PLC + Car parking + Club membership + EDC/IDC, electric connection IFMS, Possession Charge, service tax, etc.]. Against the said consideration, the complainant has paid a total amount of Rs.60,44,142/- to the respondents till date. As per Clause 2.1 of the flat buyer's agreement, the respondents were obligated to hand over possession of the allotted unit on or before 07.12.2025, inclusive of a grace period of six months. The respondents have not the Occupation Certificate from the competent authority till date even after lapse of more than 9 years. At the time of offering possession.
14. On the documents available on record and after considering the submissions advanced by both parties, the Authority observes that, in



terms of Clause 1.2 of the flat buyer's agreement dated 14.07.2017, the basic sale price of the allotted unit was fixed at Rs.57,54,480/-, excluding electric connection charges, fire-fighting charges, power back-up installation charges, interest-free maintenance security, as applicable at the time of possession, and other charges(transfer). The said charges were payable by the purchaser on the super area in accordance with the payment plan stipulated under the agreement. It is further noted that the respondents have not obtained the Occupation Certificate from the competent authority with regard to the concerned unit till date even after a delay of more than nine years.

15. It is undisputed that the complainant has been awaiting handing over of possession of the subject unit for more than nine years beyond the agreed date of possession, i.e., 07.12.2016, notwithstanding the fact that the complainant has paid 100% of the total consideration as stipulated under the buyer's agreement for a super area admeasuring 1478 sq. ft.
16. **Delayed Possession Charges and Possession:** In the present complaint, the complainant intend to continue with the project and are seeking possession of the unit along with delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

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

.....

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

17. **Due date of handing over possession:** In terms of clause 2.1 of the Agreement executed between the parties, the promoter has proposed to handover the possession within approximate period of 48 months from



the date of sanction of the building plans i.e., 07.06.2016 of the said colony with a grace period of 180 days for applying and obtaining occupation certificate. In view of the above, the due date of handing over of possession comes out to be 07.12.2015 including grace period of 180 days.

- 18. Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and seeking delay possession charges. Proviso to Section 18 provides that where an allottees 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

19. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules *ibid*, 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.

20. 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., 19.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

21. 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;"*

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 8.80% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

23. On consideration of the documents available on record and submissions advanced by the parties with regard to the alleged contravention of the provisions of the Act, this Authority is satisfied that the respondents have contravened the provisions of Section 11(4)(a) of the Act by failing to hand over possession of the subject unit within the due date as stipulated under the agreement. By virtue of clause 2.1 of the Flat Buyer's Agreement dated 14.07.2017, the due date for delivery of possession works out to 07.12.2016. It is an admitted position that the Occupation Certificate with respect to the concerned unit was not been obtained yet.



The authority is of the considered view that here has been an inordinate delay on the part of the respondents in offering physical possession of the subject unit, which amounts to a failure to discharge its statutory obligations and contractual responsibilities under the flat buyer's agreement to hand over possession within the stipulated period.

24. Section 19(10) of the Act mandates that the allottee shall take possession of the subject unit within two months from the date of receipt of the Occupation Certificate. In the present case, although the Occupation Certificate is not yet obtained. Hence, offer of possession is also not offered yet to the complainant. Therefore, in the interest of justice and fairness, the complainant is entitled to a period of two months from the date of the offer of possession after obtaining occupation certificate from the respondents to take over the unit.
25. 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 respondents is 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., 07.12.2016 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid.*
26. **Possession:** In view of the above, the respondents are directed to handover possession of the flat/unit as per specifications provided in the flat buyer's agreement executed between the parties and execute conveyance deed in favour of the complainant in terms of Section 17(1)



of the Act of 2016 on payment of stamp duty and registration charges as applicable.

27. **Conveyance Deed:** As per Section 11(4)(f) 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.

28. The rate of interest chargeable from the allottees by the respondent, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

E.IV. The respondent should be permanently restrained from undertaking any action that results in the cancellation of the complainant's flat or engaging in any act that undermines, circumvents, or adversely affects the complainant's rights, interests, and claims.

E.V. The respondent must be prohibited from creating any third-party rights over the property, ensuring that no external claims interfere with the complainant's lawful ownership.

29. The above-mentioned reliefs E.IV to E.V sought by the complainant is being taken together, as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

30. As per the documents on record it is evident that the complainant has already paid more than the agreed basic sale consideration. It is important to note that till date the respondent has neither obtained occupation certificate nor offered possession to the complainant. In view



of the above submissions and findings the respondents are directed neither to create any third-party rights nor cancel the allotment of the subject unit.

E.VI. The lines, "The Project continues to be mortgaged to the fund and a No Objection Certificate (NOC) will be required from the Fund before sale, handover, possession, or registration of any home unit in the Project," as mentioned in the quarterly updates of September 2022 to June 2023, as well as all subsequent quarterly updates, be declared unlawful, illegal, inconsequential in terms of section 11 (4) (h) of RERA Act of 2016, thereby restraining the respondent from acting thereupon or creating any pre-requisite condition of obtaining NOC from SWAMIH or any other agency in any way whatsoever and give the rightful possession directly to the complainant without creating any hindrances.

31. The Authority notes that no documentary evidence has been placed on record by the complainant in support of the aforesaid relief. However, a perusal of Clause 12.2 of the Buyer's Agreement dated 14.07.2017 reveals that the respondent has undertaken the obligation to clear all encumbrances, if any, on the subject property prior to the execution of the conveyance deed. The relevant clause is reproduced herein for ready reference:

"12.2 The Purchaser agrees that no lien shall be created/arise against the said Flat as a result of any money deposited hereunder by the Purchaser or otherwise in any manner by virtue of entering into the present Agreement. In furtherance and not in limitation of the provisions of the preceding sentence, the Purchaser agrees that the provisions of this Agreement are hereafter made/created by the First Party/Confirming Party and any payments or expenses already made or incurred or which hereafter may be made or incurred pursuant to the terms thereof and furthermore such



mortgage(s) or encumbrances shall not constitute an objection to the title of the said Flat or excuse the Purchaser from completing the payment of the price of the said Flat or performing all the Purchaser's other obligation hereunder or be the basis of any claim against or liability of the first Party/Confirming Party. However, the First Party/Confirming Party undertakes to clear such charge/encumbrances etc, on the said Flat prior to the execution of the conveyance deed of the said Flat."

32. In view of the aforesaid clause, the Authority observes that the responsibility to clear any encumbrances on the said flat squarely rests upon the respondent, who is obligated to ensure that the property is free from all charges or encumbrances, if any, prior to handing over possession to the complainant and executing the conveyance deed.

33. The respondents/promoters are directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the Authority in complaint bearing no. 4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.

E.VII. To set aside and cancel the arbitrary charges pertaining to Car parking (₹2,75,000/-) as mentioned in FBA.

E.VIII. To set aside the Club Membership charges of ₹1,50,000/- as mentioned in FBA till completion of Club.

E.IX. To set aside and cancel the arbitrary charges termed as Possession charges of ₹5,91,200/- vide letters dated 07.07.25

34. The above-mentioned reliefs E.VII and E.IX 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.

35. On Consideration of documents available on record and submissions made, the Authority observes that the basic sale consideration of the unit was Rs.57,57,480/- as per clause 1.2 of buyer's agreement dated 14.07.2017 which is inclusive of basic price, External Development



Charges, Infrastructural Development Charges, Preferential Location Charges, if any, club membership charges, and for exclusive right to use of the one covered Parking. It is evident from statement of account dated 07.07.2025, the car parking charges of Rs.2,75,000/- is inclusive in the sale consideration of Rs.57,54,480/-.

36. Club Membership charges: If the club has come into existence and the same is operational or is likely to become operational soon i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be discharged by the complainant as per the terms and conditions stipulated in the builder buyer's agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottee only after completion of the club. The Authority further observes that as per clause 1.2 of buyer's agreement dated 14.07.2017, the consideration of Rs.57,57,480/- is inclusive of Club Membership Charges.

37. Possession Charges and Other Charges: That the respondents in Statement of Account dated 07.07.2025 has demanded possession charges of Rs.5,91,200/- and under the head of other charges charging Rs.3,70,462/- which is not part of buyer's agreement dated 14.07.2017 executed between the parties. In view of the same Authority observes that the said possession charges are not valid and legal in eyes of law. The respondents are directed to set-aside the possession/Admin charges amounting to Rs.5,91,200/- and other charges charging Rs.3,70,462/-.

E.X. The respondent(s) are liable not to charge anything extra which is not a part of the FBA or contrary to Rule 8 of the RERA Rules, 2017 pertaining to 'Agreement for Sale'.



- E.XI. The respondents be directed not to make any fresh demands whatsoever and carry out a full & final settlement.**
- E.XII. The respondents be directed and restrained from charging any payment towards Super Area.**
- E.XIII. The respondents are liable to charge only as per the carpet area and not as per super area. The excess amount needs to be refunded to the complainant. The respondent(s) are liable to refund this excess amount with interest @ 24% p.a., OR SBI highest MCLR +2% as this court may deem fit till the date of refund.**
38. The above-mentioned reliefs E.X to E.XIII sought by the complainant is being taken together, as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
39. The respondents-builders are directed not to charge anything which is not part of buyer agreement.
- E.XIV. To set aside & cancel the arbitrary Interest Charges (₹4,74,099), VAT / Service-Tax / GST ₹4,27,508/- .**
40. It is contended on behalf of complainant that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondents are otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. The respondents shall charge VAT from the allottee where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is liveable. Further, the respondents shall charge actual VAT from the allottee/prospective buyers paid by the respondents-promoters to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the



complainant vis- à-vis the total area of the particular project. However, the complainant would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

41. It is contended on behalf of complainant that the respondents raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents are otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 07.12.2016 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is before 01.07.2017 i.e., date of coming into force of GST, the respondents are not entitled for charging GST. The promoter shall not charge GST from the allottees where the same was not leviable.

E.XV. The respondents should be held guilty of violation of the provisions of Section 8, Section 11(4)(h), Section 15 of RERA Act and Rule 8 of the RERA Rules, 2016 and exemplary penalty be imposed.

42. The Planning Branch of the Authority is directed to examine the matter and take appropriate action.

E.XVI. To award compensation on account of mental agony, despair and giving a false sense of hope causing emotional harassment to the complainant of ₹10,00,000/-.

E.XVII. To award compensation on account of litigation expenses of ₹5,00,000/-.



43. The above-mentioned reliefs sought by the complainant is being taken together, as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

44. The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

¶. Directions issued by the Authority:

45. 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

- a. The respondents are directed to pay delay possession charges at the prescribed rate of interest @ 10.80% per annum for every month of delay from the due date of possession i.e., 07.12.2016 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.



- b. The rate of interest chargeable from the allottees by the respondents, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- c. The respondents are directed to issue a revised statement of account after adjustment of delayed possession charges, within a period of 30 days from date of this order. The complainant is directed to pay outstanding dues if any remain, after adjustment of delay possession charges within a period of next 30 days.
- d. The respondents are directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- e. The respondents are directed to execute conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within three months of receipt of occupation certificate.
- f. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondents are also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the



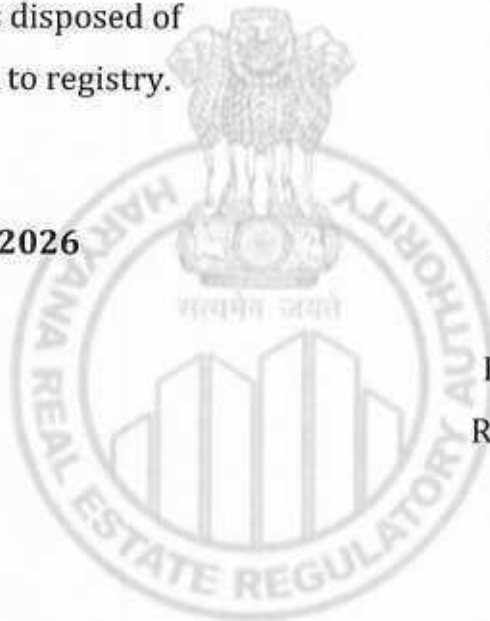
builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

- g. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- h. The Planning Branch of the Authority is directed to examine the matter and take appropriate action.

46. Complaint stands disposed of

47. File be consigned to registry.

Dated: 19.02.2026




Phool Singh Saini

(Member)

Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM