

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

Complaint no.: 1204 of 2024
Order pronounced on: 07.04.2026

Achal Pokhriyal

R/o: House no. WZ-404, Near Bansi oil Depot, Raj
Nagar, Part-II, Palam Colony, Delhi-45.

Complainant

Versus

1. M/s Almond Infrabuild Pvt. Ltd.

Registered office at: 711/92, Deepali, Nehru place,
New Delhi-110019.

**Respondent
no.1**

2. Geetamber Anand Hod

R/o:- C-226, Sector-44, Noida, Uttar Pradesh.

**Respondent
no.2**

3. Vipul Kumar Maheshwari

R/o:- Flat no. 24, Brothers Apartment 16, IP Extension,
Delhi.

**Respondent
no.3**

4. Poonam Geetamber Anand

R/o:- C-226, Sector-44, Noida, Uttar Pradesh.

**Respondent
no.4**

5. Tika Singh Rawat

R/o:- S-164-A, School Block, 2nd Floor, Shakar Pur,
Delhi-92.

**Respondent
no.5**

CORAM:

Shri. Arun Kumar

Chairman

APPEARANCE:

Prem Prakash (Advocate)

Complainant

Gaurav Rawat (Advocate)

Respondents

ORDER

- 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

- 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 project	"ATS Tourmaline"
2.	Nature of project	Group Housing
3.	Location of project	Sector-109, Gurugram, Haryana.
4.	RERA Registered	Lapsed project Registered Vide registration no. 41 of 2017 Dated-10.08.2017
5.	DTCP License	License no. 250 of 2017 dated-02.11.2007
6.	Unit no.	4031, Floor-3 rd , Tower no.-04 (As on page no. 21 of complaint)
7.	Unit area	1750sq.ft. [Super Built up area] 1064 sq.ft [Carpet Area]

		(As on page no. 21 of complaint)
8.	Agreement to sale executed between original allottees and complaint	17.02.2020 (As on page no. 54 of complaint)
9.	Endorsement in favour of the complainants	16.03.2020 (As on page no. 58 of complaint)
10.	Apartment Buyer's Agreement [Note: Executed between original allottee and respondent]	30.06.2017 (As on page no. 19 of complaint)
11.	Possession clause	<p>Clause 6</p> <p>COMPLETION OF CONSTRUCTION</p> <p>6.2</p> <p><i>The Developer endeavor to complete the construction of the Apartment within 42 (forty two) months from the date of this Agreement ("Completion Date"). The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the occupation certificate from the competent authority(ies).</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no.30 of complaint)</i></p>
12.	Due date of possession	30.06.2021 [Calculated 42 months from the date of agreement + 6 months grace period on account of Covid-19]
13.	Sale consideration	Rs.1,22,56,250/- (As per Payment Plan on page no. 51 of complaint)
14.	Amount paid	Rs.1,32,79,743/-

		(As on page no. 52 of complaint)
15.	Tri-partite agreement executed between original allottee, respondent and PNB Housing Finance	09.11.2016 (As on page no. 52 of reply)
16.	Loan amount	Rs.1,00,00,000/- (As on page no. 59 of complaint)
17.	Subvention period	<i>From the date of disbursement till 24 months plus the fraction period of the disbursement month or Date of Occupancy Certificate application submitted to the competent authority, whichever is earlier.</i> (As on page no. 59 of complaint)
18.	Occupation certificate	09.08.2019
19.	Offer of possession	09.08.2019

B. Facts of the complaint:
3. The complainant has made the following submissions: -

- I. That the complainant had purchased a flat no. 4031, Type D, 3rd Floor, Tower no. 4, ATS Tourmaline, Sector - 109, Gurugram, vide an agreement to sell dated 17.02.2020 from Mr. Praful Srivastava & Mrs. Nupur Shrivastava, who had earlier purchased the said flat from the respondent vide Apartment Buyer Agreement dated 30.06.2017.
- II. That the respondents had promised that the possession of the said flat would be handed over to complainant after 42 months from the date of execution of Apartment Buyer Agreement, so in that eventuality the date of possession comes to December 2020, however, despite the repeated

- reminders and request the respondent had not handed over the possession and have utterly failed keep their promise.
- III. That the respondent vide letter dated 07.07.2020 had acknowledged the payment of Rs.1,32,79,743/- paid by Mr. Praful Srivastava and Mrs. Nupur Srivastava as well as nomination of the flat bearing number no. 4031, Type D, 3rd Floor, Tower no. 4, ATS Tourmaline, Sector - 109, Gurugram, and the said payment was endorsed in the favour of complainant. Respondent also took a cheque of Rs. 50,000/- against advance maintenance by way of cheque drawn on Canara Bank, which was to be deposited after handing over the possession of the said flat, however the said cheque was also encashed in August 2020 but the possession of flat was still not handed over.
- IV. That the complainant is a senior citizen who has bought this flat from her hard earned money and savings of the lifetime for the comfort and safety, security in her old age but till date she has not been handed over the possession despite total payment of consideration amount against the said flat.
- V. That the respondent had initially delayed in handing over possession of the said flat due the outbreak of Covid and that was justified also but even after the normalcy in the situation the complainant has been running from pillar to post since last 3.5 years that too after the promised date of completion of work and possession date, i.e; March 2020.
- VI. That the complainant has been regularly requesting Mr. Saurabh (ATS) and Ms. Divya Negi over phone and by personal visits also to multiple times to get the status of handover, but of no avail. Every time the respondent have given the same assurance that they will complete the flat soon and handover the flat to us but nothing concrete has happened till date.

VII. That the complainant is still not getting the proper response as to when the possession of the flat would be handed over. The complainant had sent an e-mail on 29.01.2021, 09.02.2021 & 25.05.2021 but she got the same standard replies from ATS that we will soon handover the possession of the said flat, and besides that assurance nothing has happened on the ground.

VIII. That the complainant has been requesting after making all the payments in August 2019 and since then it's been more than a four years and a half now but she is yet to get the possession of the flat.

IX. That the respondent has even communicated to the complainant that we cannot give you the furnished flat as promised, despite all payments from the complainant and the same is causing mental agony to her. The respondent has now stopped taking calls of the complainants and the complainant has been paying rent of her tenanted house which is causing the extra financial burden on her.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
 - i. Handover the possession of the unit.
 - ii. Award the cost and compensation of the suit in favour of the complainant.
 - iii. Impose the penalty on the respondent for delay in possession at the rate of Rs. 5/- per month per square feet of the super built up area.

D. Reply on behalf of respondent:

5. The respondents have made following submissions:
 - I. That the complainant is not an "Allottee" but an investor who has booked the apartment in question as a speculative investment in order to earn

- rental income/profit from its resale and not for the purpose of self-use as his residence. Therefore, no equity lies in favour of the complainant.
- II. That the original allottees (Praful Srivastava and Nupur M Srivastava) approached the respondents and booked a unit in the project "ATS Marigold" on 01.07.2014 but voluntarily decided to shift to a new project that was being launched known as "ATS Tourmaline" situated in sector 109, Village Babupur, Gurugram after conducting extensive and independent enquiries with regard to the project.
- III. Thereafter, the original allottees booked a unit in the project "ATS Tourmaline" vide an application form on 30.06.2017 and were allotted unit no. 1 on 3rd floor in tower-4 admeasuring 1750 sq. ft.
- IV. An Apartment Buyer Agreement was executed between the respondent and the original allottee on 30.07.2017. Further, a Tripartite Agreement was also executed between the original allottees, respondent and the financial institution i.e. PNB Housing Finance Limited as the said unit was booked under subvention scheme.
- V. That as per clause 6.2 of the buyer's agreement, the possession of the unit was to be offered within 42 (forty-two) months from the date of the Agreement. Therefore, due date of possession comes out to be 30.12.2020 as calculated from the date of agreement i.e. 30.06.2017.
- VI. That the respondents had completed the construction on time and applied for the Occupation Certificate which was duly received on 09.08.2019 and offered the possession of the unit in question on 09.08.2019.

- VII. That the original allottees did not come further to take the possession within the prescribed time in fact after a year on 07.08.2020, the respondents received a transfer request from the original allottees stating that they have sold the unit to Achla Pokhriyal.
- VIII. That the unit in question was endorsed in the name of Achla Pokhriyal i.e. complainant on the request made by the original allottees. The complainant was called numerous times to visit the office of the respondents for further formalities related to the transfer and the name substitution but the complainant failed to do the same and kept on giving one or the other reason.
- IX. That the complainant at the time to purchase and the endorsement was well aware of the status of the project but was unnecessarily delaying in taking the possession of the unit.
- X. That the Original Allottees and the subsequent allottee in terms of the indemnities and undertakings had consciously and voluntarily declared and affirmed that they would bound by all the terms and conditions of the Agreement.
- XII. That the complainant herein stepped in the shoes of the original allottees on 07.08.2020, on which date the complainant was well aware about the status of the project and that the possession has already been offered. Therefore, the complainant was aware that the project was ready and possession had been offered within time, hence, there is no delay, therefore, the reliefs sought by the complainant are invalid and the complaint is liable to be dismissed on this ground only.

- XIII. That the original allottees and the complainant consciously and maliciously chose to ignore the offer of possession and possession reminders issued by the respondents, the complainants wilfully defaulted in taking the timely possession and started demanding the DPC for no reason/delay on the part of the respondents.
- XIV. That the respondents explained to the complainant that they are not entitled to any delay possession charges as the possession was offered within the time limit. The respondents time and again earnestly requested the complainant to obtain the possession of the unit in question and further requested the complainant to execute a conveyance deed in respect of the unit after completing all the formalities at the time of delivery of possession. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondents and threatened the respondents with institution of unwarranted litigation.
- XV. That the respondents since then had been calling and requesting the complainants to fulfil their obligations and take the possession also the respondent is maintaining the unit in question out of its own pocket since 09.08.2019, the complainant is neither taking possession nor paying the maintenance of the same.
- XVI . Therefore, there is no equity in favour of the complainant without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondents. The complainant has

consciously and maliciously refrained from obtaining possession of the unit in question. Consequently, the complainant is liable for paying maintenance charges from the date of offer of possession i.e. 09.08.2019 till the handover of possession, as enumerated in buyer's agreement, for not obtaining possession.

6. 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.
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 those undisputed documents and oral as well as written submissions made by the parties.

E. 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.

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

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.

F. Findings on the objections raised by the respondents.

F.I. Objection regarding complainant being an “Investor” and not an “Allottee”.

12. The respondents have taken a stand that the complainant is an investor and not allottee and thereby not entitled to file the complaint under section 31 of the Act. The Authority observes that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

“2(d) “allottee” in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale,

transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement endorsed in favour of the complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her and the Agreement For Sale was executed in respect of the subject unit in the project of respondents. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of respondents that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the reliefs sought by the complainant.

G.I. Handover the possession of the unit.

G.II. Award the cost and compensation of the suit in favour of the complainant.

G.III. Impose the penalty on the respondent for delay in possession at the rate of Rs. 5/- per month per square feet of the super built up area.

14. In the present complaint, the complainant intend to continue with the project and is seeking possession of the unit along with delayed possession charges.

15. In the present case, the original allottees i.e., Mr. Praful Srivastava and Mrs. Nupur M Srivastava had applied for booking a unit in the project "ATS Tourmaline" being developed by the respondents in Sector-109, Gurugram. The original allottees were allotted a unit bearing no. 4031 on the Third Floor in tower no.04, admeasuring Super built up area of 1750 sq.ft. and Carpet Area of 1064 sq.ft. Thereafter, the Apartment Buyer's Agreement was executed on 30.06.2017 inter-se the original allottee and the respondents for a sale consideration of Rs.1,22,56,250/-. The unit was endorsed in the favour of the complainants on 16.03.2020.

16. Due date of handing over possession and admissibility of grace period:

As per clause 6 of the Apartment Buyer's Agreement executed between the original allottees and the respondents, the possession of the unit was to be handed over within a period of 42 months from the date of the Agreement.

The Developer endeavor to complete the construction of the Apartment within a period of 42 (forty two) months from the date of this Agreement ("Completion Date"). The Company will send possession Notice and offer possession of the Apartment to the Applicant(s) as and when the Company receives the Occupation certificate from the competent authority(ies).

[Emphasis supplied]

17. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic and the same is also allowed to the respondent in lieu of the notification of the Authority. Thus, the due date of possession comes out to be 30.06.2021.

18. 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]

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 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.
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., 07.04.2026 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—*
- 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 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. The Authority is of considered view that there is no delay on the part of the respondents to offer of possession of the allotted unit as per the terms and conditions of the agreement dated 30.06.2017. The due date of possession for handing over of possession was 30.06.2021 and the respondent obtained the Occupation certificate from the competent authorities on 09.08.2019 and offered possession on the same day to the Original allottees i.e., much before the due date of possession i.e., 30.06.2021. The present complainant entered into the picture after the offer of possession was made and thus, suffered no delay whatsoever by the respondents. Accordingly, no failure of the

respondents to fulfil its obligations and responsibilities as per the agreement is established here.

23. Thus, the complainant is directed to take possession of the unit within a period of 90 days after depositing the outstanding dues, if any. The rate of interest chargeable on the said amount shall be 10.80%.

H. Directions of the authority

24. 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 complainant is directed to take possession of the unit within a period of 90 days after depositing the outstanding dues, if any. The rate of interest chargeable on the said amount shall be 10.80%.
- ii. The respondents are directed to get the conveyance deed of the allotted unit executed in the favour of the complainant within a period of 60 days after the above said payments is made by the complainant, if any, in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- iii. The respondents shall not charge anything from the complainant which is not the part of the agreement.

25. Complaint stands disposed of.

26. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.04.2026