

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

Complaint no. : 734 of 2025
Date of complaint : 25.02.2025
Date of order : 08.01.2026

1. Puneet Singh
2. Gurmeet Kaur
Both resident of: H. No. 1080, Sector-71, Mohali,
Punjab-160071.

Complainants

Versus

M/s Pareena Infrastructures Pvt. Ltd.
Registered office: Flat no.2, Palm Apartments, Plot
no.13B, Sector-6, Dwarka, New Delhi-110075.
Corporate address: C7A 2nd Floor, Omaxe City
Centre Mall, Sohna Road, Sector-49, Gurugram,
Haryana-122018.

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Rishabh Kanojiya, Advocate

Complainants

Shri Prashant Sheoran, Advocate

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made 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.N.	Particulars	Details
1.	Name of the project	"The Elite Residences/ Express Heights" at Sector - 99, Gurugram
2.	Project area	4.741 Acres out of total licensed area 13.32 Acres
3.	Nature of project	Group Housing Project
4.	DTPC License no.	70 of 2011 dated 22.07.2011 Valid up to 21.07.2024 82 of 2012 dated 27.08.2012 Valid up to 26.08.2026
5.	Name of licensee	M/s Pareena Infrastructure Private Limited
6.	RERA registered/not registered	Registered vide no. 46 of 2019 dated 25.09.2019 Valid up to 31.07.2020
7.	Unit no.	J-002, Tower - J, Gold Corporate (Podium) in Pareena Express Heights Tower - J is Tower - 9 in OC (As mentioned in Conveyance deed at page 121 of complaint) (As mentioned in Clause 1.2 (a) (i) of BBA at page no.31 of the complaint)
8.	Unit measuring	2285 sq. ft. (super area) (As mentioned in Clause 1.2 (a) (i) of BBA at page no.31 of the complaint)
9.	Date of start of construction	31.01.2014 (As confirmed by both the counsels during proceedings dated 08.01.2026, also as mentioned in AtoH submitted before the Authority)
10.	Date of execution of flat buyer's agreement	09.12.2017 (As per page no.28 - 57 of complaint)
11.	Possession clause	3.1 That the developer shall, under normal conditions, subject to force majeure,



		<p><i>complete construction of Tower/Building in which the said flat is to be located within three years of the start of construction or execution of this agreement, whichever is later...</i></p> <p>Read with</p> <p><i>5.1 In case within a period as provided hereinabove, further extended by a period of 6 (six) months, if so, required by the developer, the developer is unable to complete construction of the said flat as provided hereinabove (subject to Force majeure conditions...</i></p> <p>[Emphasis supplied]</p> <p>(As per page 40 & 42 of complaint)</p>
12.	Due date of possession	<p>09.06.2021</p> <p>[09.12.2020 + 6 months]</p> <p>Note: The due date of possession is calculated 3 years from the date of execution of buyer's agreement, being later Plus Grace period of 6 months)</p>
13.	Basic sale consideration	<p>Rs.1,02,02,525/-</p> <p>(As mentioned in Clause 1.2 (a) (i) of BBA at page no.31 of the complaint)</p>
14.	Total sale consideration	<p>Rs.1,29,01,900/-</p> <p>(As per summary of dues i.e., Annexure-I with BBA at page no. 48 of the complaint)</p>
15.	Total amount paid by the complainant	<p>Rs.1,37,53,854/-</p> <p>(As mentioned in clause 1.1 & 1.2 of conveyance deed dated 14.11.2024 at page 120 of complaint)</p>
16.	Occupation certificate	<p>09.11.2022</p> <p>[For Tower No.1, 3, 9, 10 & EWS]</p> <p>(As per document uploaded at the official HARERA website)</p>
17.	Offer of possession	<p>25.11.2022</p> <p>(As per page no. 64 – 74 of the complaint)</p>
18.	Possession Certificate	<p>09.09.2023</p> <p>(As per page no.78 of complaint)</p>
19.	Conveyance deed	<p>14.11.2024</p> <p>(As per page no.113 – 145 of complaint)</p>

B. Facts of the complaint:

3. The complainants have made the following submissions: -
- I. The instant complaint is being filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 ("HRERA Rules").
 - II. The complainants approached the respondent in May-June of 2012 and upon expressing their desire of purchasing a unit in their upcoming project "The Elite Residences/Express Heights" situated at Sector-99, Gurugram, Haryana, the respondent apprised them that the bookings had already commenced and that due the high demand shown by prospective buyers, the complainants should pay the booking amount and secure their unit as early as possible.
 - III. Moreover, the respondent informed the complainants that the payments for the unit would be linked to construction-phases and therefore, the complainants would only be required to pay manageable fractions/percentages of the total booking amount as and when the construction milestone would be arrived at. Considering the offer made by the respondent in its totality, the complainants were interested in proceedings with procuring a unit in the aforesaid project.
 - IV. Further, the complainants were informed that the construction of their chosen unit, i.e., J-002, bearing 2,285 sq. ft. located on the Ground Floor, would commence sometime in 2013 and would the handover of possession of the fully constructed unit would be carried out within 3 from the date of commencement of the construction/booking. As the complainants repeatedly requested the respondent to reduce this understanding in writing, the latter assured that a builder-buyer agreement containing these same clauses would be executed shortly.

- V. Accordingly, as the complainants were willing to procure a unit in the aforesaid project, an amount of Rs.10,00,000/- was paid towards the "Booking Amount" against unit no. J-002 allotted to the complainants by the respondent. The aforesaid amount was paid to respondent on 10.06.2012.
- VI. The respondent assured the complainants that a builder-buyer agreement would be executed in the near future. Acting on this assurance, respondent issued a demand letter dated 10.06.2012, acknowledging the receipt of Rs.10,00,000/- and made a further demand of Rs.11,03,557/- towards the first instalment, which was also paid by the complainants vide cheque bearing no. 37633 dated 24.07.2012.
- VII. Upon payment of the booking amount and the first instalment, the complainants repeatedly followed up with the respondent to execute the builder-buyer agreement. The complainants were even constrained to visit the offices of the respondent and the project site; however, they were always turned away with false assurances and promises by the respondent and their representatives that the said agreement will be executed shortly.
- VIII. However, much to the disappointment and dismay of the complainants, the respondent failed to execute the builder-buyer agreement till December 2017. Notwithstanding the inordinate delay in execution of the agreement, the complainants, strictly as per the understanding that the payments were linked with construction phases, continued to make milestone payments since June 2012.
- IX. Aggrieved by the lack of any communication about the status of the construction, complainant no.1 issued email dated 27.03.2017 to respondent seeking an update. A follow-up reminder was sent on 30.03.2017 as the respondent failed to revert. Thereafter, on 31.03.2017, after numerous attempts to communicate with the respondent physically



by attending their offices and orally through various phone calls, respondent issued an email stating that the next instalment would be payable in the last week of May 2017, while failing to update the status of construction of the flat under question.

- X. The respondent, contrary to the understanding between the parties, suddenly claimed the entirety of the pending amount towards the sale consideration towards the end of May 2017, in abject contradiction to the payment plan linked to construction milestones. On 24.05.2017, complainant no.1 issued an email to respondent objecting to the above in response to which the respondent stated that the complainant was required to make a payment of Rs.30,00,000/- by 31.07.2017 and the remaining in four equal instalments.
- XI. Finally, on 09.12.2017, after repeated requests by the complainants, the complainants and respondent executed an apartment buyer agreement ("ABA") for unit no. J-002 in the group housing complex named Pareena Express Heights.
- XII. However, in abject contradiction of respondent earlier assurances and in blatant violation of the trust reposed in it by the complainants, respondent, with utmost mala fide intention, linked the time period for completion of construction not from the date of construction itself, as was previously agreed, but from the date of the execution of the ABA to unlawfully grant itself a 3-year buffer to complete the construction.
- XIII. As the complainants had already paid an amount of Rs.51,03,557/- by December 2017, they agreed to execute the ABA to avoid any further delays.
- XIV. However, the construction of clause 3.1 was altered in the most clandestine manner to grant respondent additional time for completing the construction of the unit and to further harass the complainants; such an



arbitrary exercise of the respondent's greater bargaining power to execute such an agreement is unlawful.

- XV. Notwithstanding the above, the respondent failed to deliver the possession of the constructed unit even after the belated execution of the ABA. This failure promoted the complainants to issue yet another email on 15.05.2022 requesting for an update on the status of handover of possession. It is relevant to state that at the time of writing this email, the complainants had already paid approximately 90% of the total sale consideration and had spent 10 (ten) years waiting for handover of possession. In response thereto, on 17.05.2022, respondent stated via email that it had applied for the Occupation Certificate (OC") and that they would receive it by July-August 2022 and, subsequently, possession would only be granted 45-60 days post receipt of the OC.
- XVI. On 25.11.2022, respondent issued the offer of possession demanding the payment of the balance amount of Rs.8,14,375/- payable by 17.12.2022. The complainants, in adherence of their obligations under the ABA deposited 100% of the sale consideration, i.e., Rs.1,37,53,854/- by December 2022. However, despite the assurances from the respondent that the handover of the unit would be executed in the second half of 2022, no such steps were taken.
- XVII. It is relevant to reiterate that the payment was linked to the construction milestones, and despite the fact that respondent had already demanded the payment for the final milestone, and had received it in December 2022, the respondent was bound to handover the possession also.
- XVIII. However, despite making the payment as demanded by respondent in the offer of possession dated 25.11.2022, it failed to handover the possession of the unit under question till June 2023.



- XIX. Aggrieved by the lackadaisical conduct of respondent, complainant issued email dated 14.04.2023 highlighting the delay in handover of possession and pointing out the deficiencies in the construction that still lingered on despite the passage of 11 (eleven) years from the date of booking. Follow-up reminders were issued on 19.05.2023, 22.05.2023 and 27.05.2023. Finally, on 06.06.2023, respondent replied to the emails of the complainant that the possession of the unit can be handed over to any date convenient to the complainants; which was subsequently scheduled to be done on 10.06.2023.
- XX. Despite the repeated commitments made by respondent, the unit under question was only handed over on 09.09.2023, i.e., after a delay of 4,108 days / 11 years and 2 from the date of booking of the said unit on 10.06.2012.
- XXI. It is also important to note that while the respondent repeatedly assured the Complainants that the construction would begin in 2013 itself, it has apparently begun only on 31.01.2014 as per respondent's FORM REP-I submitted before this Authority on 30.07.2019 as against the project in question (bearing Temporary Project ID: RERA-GRG-PROJ-266-2019).
- XXII. Subsequently, on 14.11.2024, a conveyance deed was executed between the complainants and respondent.
- XXIII. Therefore, in light of the fact that the construction commenced on 31.01.2014 and the date of actual handover of possession is 09.09.2023, considering the construction period of 3 years, there has been a delay of 2,412 days/6 and 7 months.
- XXIV. However, with apparent and arbitrary mala fide intentions, respondent deliberately delayed the execution of the ABA despite having received and accepted the booking amount on 10.06.2012, solely to afford itself

additional construction time to avoid paying the requisite delayed possession compensation.

- XXV. It is further relevant to highlight that the ABA otherwise provides for an imposition of penalty interest of 24% p.a. compounded in the event that the allottees fail to adhere to the construction linked payment plan but does not provide for any similar relief in favour of the allottees if the respondent-developer fails to complete the construction in time. The ABA, therefore, has been deliberately drafted by the respondent in a manner that is wholly arbitrary and visits severe consequences upon the allottees for even slight delays while excusing the developer from any coercive action on account of any delay by it.
- XXVI. The complainants have invested their hard-earned money with the respondent starting from 10.06.2012 but have received possession of their flats only on 09.09.2023 without any compensation whatsoever, despite the fact that the construction was to be completed within 3 years from the date of completion of construction.
- XXVII. For the sake of clarity, clause 5.1 of the ABA provides for possession to be paid in the event the construction is not completed within 3 years, the allottee is entitled to compensation of Rs.5/- square feet per month till date of notice of possession. However, this cause is entirely in contravention of Rule 15 of the HRERA Rules which prescribes the interest payable by the promoter upon delayed handover of possession to be the State Bank of India Marginal Cost of Lending Rate plus 2%.
- XXVIII. Moreover, it is also relevant to advert to Section 18(1) of RERA Act which provides that in case the promoter fails to give possession of an apartment in accordance with the terms of the agreement, the allottee shall have the right to withdraw from the project. Further, the Proviso to Section 18(1) 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 the possession, at such rate as may be prescribed."

- XXIX. That the delay compensation payable under the ABA to the Complainants is contrary to Proviso to Section 18(1) of the RERA read with Rule 15 of the HRERA Rules, which prescribe that State Bank of India highest marginal cost of lending rate plus two percent, per annum would be the prescribed rate of interest to be awarded to the allottee as interest on delay in delivery of possession for every month of delay till handing over of possession of the subject unit.
- XXX. In light of the aforementioned facts and the extant statutory framework, it is submitted that the rights of the complainants cannot be limited by the terms of the apartment buyer agreement and are entitled to interest on delayed possession at the rate of State Bank of India highest marginal cost of lending rate plus two percent per annum from expiry of 79 months from date of start of construction till 09.09.2023 (i.e. date of actual possession of the unit to the complainants) as is provided under Section 18 of the RERA read with Rule 15 of the HRERA Rules.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
- Direct the respondent to pay delayed possession compensation for every month of delay from expiry of 3 (three) years from the commencement of construction till the actual date of handing over possession to the complainants i.e., 31.01.2017 to 09.09.2023 at the rate prescribed by Rule 15 of the HARERA Rules, 2017.
 - Any other relief that the Authority may be pleased to grant in the facts and circumstances of the case.
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 by filing reply on the following grounds: -
- I. That in the present case builder buyer agreement was executed on 09.12.2017 and as per clause 3.1 it is specifically agreed that " the Developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said Flat is to be located within three years of the start of construction or execution of this agreement whichever is later" that even in the clause 13 of the application form which was duly filled and signed by the allottee it is specifically agreed by that the proposed date of delivery shall be calculated form date *of signing of buyer agreement subject to timely payment by the Applicants* the present complaint is liable to be dismissed as the complainant is not eligible for any delayed possession compensation. The complainant is merely attempting to recover unwarranted sums from the respondent without any legal basis. The complaint is an afterthought and a misuse of the forum, and it deserves to be rejected at the threshold.
 - II. That the date for delivery of possession of the said unit is to be computed from the date of signing of the builder buyer agreement, and not from the date of commencement of construction. This has been clearly stated in the BBA as well as application form, which was duly signed and accepted by the complainant himself.
 - III. It was never agreed between the parties that the possession timeline would start from the beginning of construction and not form date agreement.
 - IV. That the complainant never raised any issue or objection regarding the computation of the possession period from the execution of BBA. In fact,



the BBA was signed on 09.12.2017, and accordingly, the timeline for possession is to be computed from that date.

- V. That a period of 6 months should be excluded from the computation of construction/delivery timeline due to the COVID-19 pandemic and construction restrictions imposed by the Hon'ble Supreme Court and environmental authorities to prevent pollution, which affected construction activities across the region. These were events beyond the control of the respondent and fall under force majeure circumstances.
- VI. That the prescribed period of completion is however subject to force majeure circumstances. It is submitted that there were a number of judicial orders, notifications and other circumstances which were completely beyond the reasonable control of the respondent, which directly impeded the ability and even the intention of the respondent to continue with the development and construction work of the said project. It will be detailed hereinafter that on account of various notifications and judicial orders the development and construction work of the said project was impeded, stopped and delayed. That the total number of days for which despite of their being an absolute willingness on the part of respondent, respondent could not raise construction; totals to 141 days. The details of these notifications, judicial orders et cetera are:

Sr. No.	Court/Authority order	No. of days to be extended due to force majeure
1.	NGT order 8 th of November 2016 National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order	7 days
2.	NGT order 09-11-2017 to stop construction. Same was vacated on 17-11-2017	9 days



3.	HCPA (Environment protection and control Authority for Haryana) order dated 28-10-2018 no construction for 10 days	10 days
4.	MCG order 11-10-19 no construction till 31-12-2019	81 days
5.	Supreme court order dated 04-11-19 to stop construction. Order was recalled on 14-02-20	92 days
Total number of days		141 days

VII. That completion of the project shall be considered as 3 years after addition of force majeure circumstances. The date of grant of environmental clearance which was granted on 15.03.2016. Thus, from the above detailed 141 days should be added to the period of 3 years. Similarly on account of corona virus pandemic HRERA granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01.04.2021 to 30.06.2021 .That even Town and Country Planning extended the period of 6 months from 01.03.2020 to 30.09.2020 and further 2 months from 01.04.2021 to 31.05.2021 and imposed moratorium for the period qua all the real estate projects for all purpose and intents as stipulated in those notifications and the present project is squarely covered under said notifications and is entitled for benefits provided in said notifications.

VIII. That whenever construction was stopped due to any reason either because of lockdown or any interim orders of Hon'ble Supreme court/MCG/Environment pollution control boards of state of Haryana and separately of NCR, it created a hurdle in pace of construction and after such period was over, it required considerable period of time to resume construction activity. It is submitted that whenever construction activity remains in abeyance for a longer period of time, then the time required to gather resources and re-commence construction; also became longer, which further wasted considerable time. That longer the construction remains in abeyance due to circumstances discussed herein, longer the time period required to start again.



IX. That above stated orders are absolute and beyond the control of developers. That there are several others order and notifications which cases delay in the construction of project and are beyond the control of developer. That these notifications are:

1.	NGT order 18-12-2017 to implement earlier order of stoppage of construction but with some conditions i.e., if Pm10 (1000) & Pm2.5 (600) goes higher than permissible limit no construction is allowed	60 days approx
2.	EPCA (Environment protection and control Authority for NCR) Action plan if PM10 higher than 500 and PM2.5 higher than 300 than construction should stop	60 days approx
3.	Outbreak of pandemic (COVID 19) in starting of year 2020 and HRERA itself extend 6 months, however lockdown remains more than 9 months	270 days approx
4.	NGT Order 7th of April 2015 National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It had further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	The aforesaid ban affected the supply of raw materials as most of the contractors/ building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered construction activity.
5.	NGT order 19 th of July 2017 National Green Tribunal in O.A. no. 479/2016 had directed that no stone crushers be permitted to operate unless they obtain consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environmental Clearance from the competent authority.	The directions of NGT was a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravel directly affected the supply & price of ready-mix concrete required for construction activity.
6.	Environment Pollution (Prevention and Control) Authority order dated 7th of November 2017 Environment Pollution (Prevention and Control) Authority had directed to closure of all brick kilns, stone crushers, hot mix plants etc. with effect from 7th of November 2017 till further notice. Till date the order of closure of brick kilns and hot mix plants has not been Vacated	The bar for closure of stone crushers simply put an end to construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activity but a precious period of 90 days was consumed in doing so.

X. That once the conveyance deed has been executed and the property has been lawfully conveyed, all prior agreements, including the application form and builder buyer agreement, merge into the sale deed, and the parties are thereafter governed only by the terms of the registered conveyance Deed.

7. All other averments made in the complaint are denied in toto.

8. 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:

9. 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

10. 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

11. 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;

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.

12. 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. Finding on the objections raised by the respondent:

F.I Objection regarding force majeure circumstances.

13. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts and adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration which does not make a huge impact on project which can cause and justify inordinate delay of 1.5 year. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020, due to Covid-19 there may be a delay but the same has been set off by the government as well as authority while granting extension in registration of the projects, the validity which expired from March, 2020 for a period of six (6) months. The due date of possession in the present case as per clause 3.1 is come to 09.12.2020, which is after March, 2020. Therefore, an extension of six months is to be given over and above the



due date of handing over of possession in view of HARERA Notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date for handing over of possession is comes out to 09.06.2021. Thus, no period over and above grace period of 6 months can be given to the respondent-builder. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrong.

G. Finding on the reliefs sought by the complainants.

G.I Direct the respondent to pay delayed possession compensation for every month of delay from expiry of 3 (three) years from the commencement of construction till the actual date of handing over possession to the complainants i.e., 31.01.2017 to 09.09.2023 at the rate prescribed by Rule 15 of the HARERA Rules, 2017;

G.II Any other relief that the Authority may be pleased to grant in the facts and circumstances of the case.

14. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. In the present complaint the complainants intend to continue with the project and are 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.”*

16. Clause 3.1 of the buyer's agreement dated 09.12.2017 provides the time period of handing over possession and the same is reproduced below:

3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is to be located with 3 years of the start of construction or execution of this agreement whichever is later...

Read with



5.1 In case within a period as provided hereinabove, further extended by a period of 6 (six) months, if so, required by the developer, the developer is unable to complete construction of the said flat as provided hereinabove (subject to Force majeure conditions...

(Emphasis Supplied)

17. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoters, 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 sub-Section (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.

18. 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.

19. 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., 08.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

20. The definition of term 'interest' as defined under Section 2(z) 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;”

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to her in case of delayed possession charges.
22. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 3 years from the start of construction or execution of agreement, whichever is later. The builder buyer agreement was executed between the parties on 09.12.2017 whereas construction (excavation) was started by the respondent is 31.01.2014. Therefore, the due date of possession is calculated from the date of execution of buyer's agreement, being later and comes to be 09.12.2020. Further, as per HARERA Notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 09.12.2020 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the



due date of possession comes out to be 09.06.2021 (including grace period). The occupation certificate for the tower in which unit of the complainants is situated was granted by the competent authority on 09.11.2022 and thereafter, the possession of the subject unit was offered to the complainants on 25.11.2022. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer the possession of the subject unit to the complainants-allottees and there is failure on part of the respondent-promoter to fulfil its obligation and responsibilities as per the buyer's agreement 09.12.2017 to handover the possession within the stipulated period.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 09.11.2022. The respondent offered the possession of the unit in question to the complainants only on 25.11.2022, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 month's time from the date of offer of possession. These two months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking of possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (25.11.2022) which comes out to be 25.01.2023.



24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 09.06.2021 till the expiry of 2 months from the date of offer of possession (25.11.2022) which comes out to be 25.01.2023 or actual handing over, whichever is earlier as per provisions of Section 18(1) of the Act read with rule 15 and Section 19(10) of the Act.

H. Directions of the Authority

25. 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 is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.80% per annum for every month of delay from the due date of possession i.e., 09.06.2021 till offer of possession (i.e., 25.11.2022) plus two months i.e., 25.01.2023 or actual handing over, whichever is earlier, as per Section 18(1)(a) of the Act read with Rule 15 of the Rules, *ibid*.
 - ii. The arrears of the interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter 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.



- iv. The respondent-promoter shall not charge anything from the complainants which is not the part of buyer's agreement.
26. Complaint as well as application, if any, stands disposed of accordingly.
27. File be consigned to registry.

Dated:08.01.2026



(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM