

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

Complaint no.: 3792 of 2024
Date of filing: 14.08.2024
Date of first hearing: 07.11.2024
Date of decision: 13.01.2026

Sanjeev Nischal

R/o: - G-22 near PVR Vikaspuri, Tilak Nagar, West Delhi-11018.

Complainant

Versus

M/s Sepset Properties Private Limited

Regd. Office at: - 11th floor, Paras Twin Towers, Sector-54, Golf Course Road, Gurugram, Haryana - 122002

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Neha Yadav proxy counsel (Advocate)

Complainant

Shri Sagar Bhatia (Advocate)

Respondent

ORDER

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

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Paras Dews", Sector- 106, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered 118 of 2017 dated 28.08.2017
4.	DTPC License no.	61 of 2012 dated 13.06.2012
	Validity status	12.06.2020
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
5.	Allotment Letter in favour of original allottee i.e., Mrs. Nalini Jolly	10.01.2013 (Page no. 29 of complaint)
6.	Unit no.	T-C/1501, 15 th floor, tower-C (Page no. 29 of complaint)
7.	Unit measuring	1760 sq. ft. (Page 37 of complaint)
8.	Date of execution of apartment buyer's agreement between the complainant and respondent herein	12.06.2013 (Page no. 35 of complaint)
9.	Date of execution of amendment to the apartment buyer's agreement between the complainant and respondent herein	11.03.2019 (Page no. 73 of complaint)
10.	Possession clause	3. Possession <i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and</i>

		<p><i>not being in default under any of the provisions of this Agreement and having complied with all provisions. formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser.</i></p>
11.	Environment clearance	06.09.2013 (taken from another file CR/8046/2022 decided on 21.12.2023)
12.	Due date of possession	06.09.2017 (Note: - Calculated from the date of environment clearance i.e. 06.09.2013 being later including grace period) (Grace period of six months is allowed being unqualified and unconditional)
13.	Total sale consideration	Rs.1,07,29,120/- (As per payment plan page no. 68 of complaint)

	Revised total sale consideration	Rs.1,01,33,120/- (As per amendment to the apartment buyer's agreement dated 11.03.2019 between the complainant and respondent herein at page 74 of complaint)
14.	Total amount paid by the complainant	Rs.1,01,78,034/- (As per SOA dated 24.01.2019 at page no. 78 of complaint)
15.	Occupation certificate	15.01.2019 (Page no. 52 of the reply)
16.	Offer of possession	24.01.2019 (Page no. 71 of complaint)
17.	Re-offer of possession	27.10.2021 (Page no. 76 of complaint)
18.	Date of checklist of the allotted apartment	31.10.2021 (Page no. 77 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a) That on 29.12.2012, the one Ms. Nalini Jolly booked a unit bearing no. "T-C/15 01" in the residential group housing project namely "Paras Dews" situated at Sector 106, Dwarka Expressway, Distt. Gurgaon, Haryana and in pursuance of the booking paid an amount of Rs. 7,50,000/- to the respondent against the total sale consideration of the subject unit. The above-mentioned payment was acknowledged by the respondent and a receipt bearing no. 356 dt. 29.12.2012 was issued.
- b) That subsequently on 10.01.2013, an allotment letter was issued by the respondent namely M/s Sepset Properties Private Limited in the name of one Ms. Nalini Jolly wherein an apartment bearing no. "T-C/15 01" on 15th floor, admeasuring super area of 1760 sq. ft. was allotted in the subject project at BSP @ Rs. 5092/- per sq. ft.
- c) That an amount of Rs. 10,97,769/- was paid by Ms. Nalini Jolly to the respondent against the total sale consideration of the subject unit and the

respondent acknowledged the said payment and issued a receipt bearing no. 1134 dt. 20.03.2013 in this regard.

- d) That the above-mentioned receipt dated 29.12.2012 and 20.03.2013 along with allotment letter were endorsed by the respondent in the favour of the present complainant namely Mr. Sanjeev Nischal and it is at this time when the present complainant stepped into the shoes of the allottee since all the rights arising out of these receipts and allotment letter were now endorsed in the favour of the present allottee.
- e) That on 12.06.2013, a buyer's agreement was executed between the respondent and the present complainant namely Mr. Sanjeev Nischal, wherein an apartment bearing no. 01 in Tower-C on 15th Floor, having a super area of 1760 sq. ft. was allotted against a total sale consideration of Rs. 1,07,29,120/-.
- f) That on 24.01.2019, the respondent issued an offer of possession to the present complainant vide which the respondent informed that they have now obtained the Occupation Certificate for the subject project and are ready to begin the possession process. However, after visiting the project site, the complainant found that the subject unit was not ready and is not in the condition of handing over. On this the respondent assured the complainant allottee that they will expedite the process and will inform the complainant allottee as soon as the subject unit will be ready for handing over of physical possession.
- g) That on 11.03.2019, an amendment to the original buyer's agreement was executed on this date vide which the annexure C of the original/ principal buyer's agreement dt. 12.06.2013 was replaced and modified with the new one. It is necessary to mention here that in this Amendment to the original buyer's agreement, the total sale consideration was mentioned as Rs. 1,01,33,120/- and One-time additional charges, LPG Infrastructure

charges, 2 years maintenance charges and club usage charges are included within the above-mentioned total sale consideration i.e., Rs. 1,01,33,120/-. In simple words, all the above-mentioned charges are now included in the total sale consideration i.e., Rs. 1,01,33,120/- and need not be separately paid by the complainant allottee.

- h) That after repeated follow-ups, site visit and communication vide email with the respondent and its officials, the present complainant was informed that although Occupation Certificate has been obtained but still the unit is not yet ready and cannot be handed over to the complainant allottee. After running from pillar to post it was on 27.10.2021 that the respondent intimated the complainants that their flat is ready for handover and specifically requested the complainant allottee to visit the subject unit and complete the process of possession.
- i) That in pursuance of the email dated 27.10.2021 issued by the respondent, the complainant acted promptly and on 31.10.2021 itself took the physical handover of possession of the subject unit despite the fact that the said possession is a defective possession. In view of the above, it is most humbly prayed that as per the terms of this amendment to buyer's agreement dt. 11.03.2019, the Respondent shall be directed to abide by its contractual obligation and hence, shall not charge any maintenance charges w.r.t the subject unit till 31.10.2023. Further, as per provisions of section 18 of the Act of 2016, the Respondent is liable to pay delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules, from due date of possession i.e., 12.12.2016 till actual handing over of possession of the subject unit. i.e., 31.10.2021.
- j) That as per clause as per the clause 3.1 of the buyer's agreement dated 12.06.2013, executed inter se both the parties, the respondent company has promised to handover the possession of the subject apartment within

a period of 42 months with an additional grace period of 6 months from the date of execution of this agreement or date of obtaining all license and approvals for commencement of construction, whichever is later subject to force majeure. The date of execution of the buyer's agreement is 12.06.2013, date of grant of license by DTCP is 13.06.2012 and date of approval of building plan by DTCP bearing Memo no. ZP-839/JD (BS)/2012/27185 is 29.12.2012. On bare perusal of the clause 3.1 of the buyer's agreement, it becomes apparently clear that the due date of possession should be calculated from the date of execution of the buyer's agreement i.e., 12.06.2013 (as it being the later date) and hence, the due date of possession comes out to be 12.12.2016. Further, a grace period of 6 months should not be allowed in the present case, as the respondent has failed to complete the construction of the subject unit and to deliver the possession of the same in promised time frame and it is a well settled law that "No one can take benefit out of its own wrong". Furthermore, there was no correspondence from the respondent builder w.r.t any unforeseen or unplanned project realities as mentioned in clause 3.1 of the buyer's agreement.

- k) That it is a matter of fact that the present complainants had paid the entire sale consideration to the tune of Rs. 1,01,78,034/- against the total consideration of Rs. 1,01,33,120/- as and when demanded by the respondent builder. However, in spite of the present complainant having fulfilled its obligations being an allottee, the respondent has not fulfilled their contractual and lawful obligation and has considerably delayed the construction and hence possession of the subject unit. As per clause 3.1 of the buyer's agreement, the promoter had promised to handover the physical possession of the subject unit by 12.12.2016. But the respondent has handed over the physical possession of the subject unit by almost 5

years and it was on 27.10.2021 only that the physical possession had been offered to the complainant.

- l) That it is a matter of fact and record and same can also be corroborated from clause 2.2 of the buyer's agreement that the present complainant has purchased a car parking slot along with the subject unit and had specifically paid Rs. 3,00,000/- under the head of car parking charges. It was an obligation on the part of the promoter to provide a dedicated and designated car parking space to the complainant however, even after collecting the entire consideration under this specific head of car parking, the respondent has failed to provide the same till date. Interestingly, the car parking is neither mentioned or specified in the offer of possession nor has been provided to complainant till date despite repeated follow ups in this regard. Hence, the respondent has mercilessly failed to honour its contractual and lawful obligations by not providing a dedicated and designated car parking space to the complainant despite the receipt of the parking charges. Therefore, it is most humbly prayed before the Authority to direct the respondent to provide a dedicated and designated car parking space to the complainant as agreed inter se vide buyer's agreement dated 12.06.2013.
- m) That vide buyer's agreement, the respondent has promised to provide four split AC units to the complainant and the same is clearly mentioned in the annexure-II of the buyer's agreement. Unfortunately, despite repeated follow ups in this regard, the respondent has failed to provide those four split AC units to the complainant till date and has failed to upkeep its contractual obligations. The above-mentioned fact is specifically reflected in checklist of the apartment bearing no. T-15 01 dated 31.10.2021. It is most respectfully prayed before the Authority to kindly direct the

- respondent promoter to provide the four split AC unit, as agreed inter se vide buyer's agreement dt. 12.06.2013.
- n) That vide checklist of apartment dt. 31.10.2021, it was specifically stated by the complainants that the LPG Infrastructure and the telephone line were not installed despite the same being agreed upon inter se complainant and the respondent. Also, it is submitted that respondent has specifically charged LPG Infrastructure charges from the complainant but has failed to install the same. It is most humbly prayed from the Authority to direct the respondent to install LPG gas pipeline and telephone line on immediate basis.
- o) That in the light of the facts mentioned above, the respondent is liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of possession i.e., 12.12.2016 till actual handing over of physical possession of the unit i.e., 31.10.2021 as per the provisions of section 18 of the Act of 2016.
- p) That the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the subject project on time, has caused the complainants great financial and emotional loss. Due to the malafide intentions of the respondent and non-delivery of the subject apartment the complainants have accrued huge losses on account of the career plans of their family members and themselves and the future of the complainants and their families are rendered in dark as the planning with which they had invested their hard-earned monies has resulted in sub-zero results and borne thorns instead of bearing fruits.
- q) That the complainant being an aggrieved person is filing the complaint under section 31 with Authority for the violation/contravention of various provisions of the Act of 2016 and Rules of 2017. It is the failure of the

promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.06.2013 to hand over the possession of the subject unit within the stipulated period. Hence, the respondent has failed to fulfil its obligations as contained in section 11(4)(a) read with section 18(1) of the Act of 2016. The respondent is liable to hand over the possession of the subject unit on or before the due date of possession which is 12.12.2016 as per the clause 3.1 of the buyer's agreement. Therefore, the respondent is liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of possession i.e., 12.12.2016 till actual handing over of physical possession of the subject unit i.e., 31.10.2021 as per the provisions of section 18 of the Act of 2016. Also, it is most humbly prayed from the Authority that the respondents shall be directed to not charge any maintenance charges till 31.10.2023 as agreed inter se parties vide amendment to the original buyer's agreement dt. 11.03.2019. Further, it is most humbly prayed before the Authority to direct the respondent to provide a dedicated and designated car parking space to the complainant and to provide the four split AC unit, as agreed inter se vide buyer's agreement dt. 12.06.2013.

C. Relief sought by the complainant

4. The complainant has sought following relief(s):
 - I. Direct the respondent to pay delay possession charges at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the promissory date of delivery of the subject unit i.e., 12.12.2016, till the date of actual handover of possession of the subject unit i.e., 31.10.2021 in view of section 18 of the Act of 2016 along with future interest till the date of actual realisation of delay possession charges;

- II. Direct the respondents to not charge any maintenance charges till 31.10.2023 as agreed inter se parties vide amendment to the original buyer's agreement dt. 11.03.2019.
 - III. Direct the respondent to provide a dedicated and designated car parking space to the complainant as agreed inter se vide buyer's agreement dated 12.06.2013.
 - IV. Direct the respondent promoter to provide the four split AC unit, as agreed inter se vide buyer's agreement dt. 12.06.2013.
 - V. Direct the respondent to install LPG gas pipeline and Telephone line as agreed inter se parties.
5. 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 based on these undisputed documents and submissions made by the complainant.
- D. Reply by the respondent.**
6. The respondent contested the complaint on the following grounds:-
- a) That the present complaint is not maintainable as the complainant has suppressed material facts and approached the Authority with unclean hands. The complainant has conveniently concealed the fact that a valid offer of possession was made to him on 24.01.2019 upon issuance of the Occupation Certificate for the project. However, the complainant failed to clear his outstanding dues amounting to Rs. 7,00,237/- as clearly reflected in the statement of accounts dated 24.01.2019, which was issued along with the said offer of possession. As per the terms and conditions of the builder buyer agreement, possession can only be handed over only upon full settlement of all outstanding payments. The significant delay between the offer of possession in January 2019 and the actual handover in October 2021 is attributable to the complainant's own defaults in clearing his financial obligations and completing the necessary formalities. In view of

the above, the claim for delay possession charges during this period is wholly untenable and arises solely due to the complainant's failure to discharge his contractual obligations.

- b) That the complaint is barred by the principles of estoppel and waiver. The complainant, despite being fully aware of all the alleged deficiencies, voluntarily and unconditionally took possession of the subject apartment on 31.10.2021 and executed a "checklist of apartment". By accepting possession without protest and after a prolonged period from the initial offer, the complainant has acquiesced to the condition and timing of the delivery and is now estopped from raising any claims for delay or defects thereafter. The act of taking possession signifies the culmination of the contractual agreement, and the complainant has thereby waived his right to litigate on issues that were known or ought to have been known to him at the time of such acceptance. Accordingly, the complaint is not maintainable and is liable to be dismissed.
- c) That the complaint is further barred by limitation. The cause of action, if any, for filing the present complaint arose on 24.01.2019, when the complainant was offered possession of the unit by the respondent. It has been categorically held by this authority that the reasonable period for a litigant to initiate litigation to press his rights is three years. Even if the exemption granted on account of Covid-19 i.e., from 15.03.2020 till 28.02.2022 is taken into account, the complaint should have approached this authority by January 2024. The complainant cannot be allowed to take advantage of its own wrong by, first, refusing to take the possession of the unit and then, by using the said delay to extend the limitation period.
- d) That the reliefs sought by the complainant are governed exclusively by the contractually agreed terms, which cannot be unilaterally altered or supplemented. The builder buyer agreement dated 12.06.2013, in clause

3.3, contains a specific provision for compensation in case of delay, at a pre-determined rate of Rs. 5/- per sq. ft. per month of the super area. The complainant, having continued with the project without opting out, is bound by this mutually agreed-upon compensation clause. The claim for interest at the rate prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, is an impermissible attempt to circumvent the explicit contractual terms agreed upon by both the parties. It is a well-established principle that where a contract stipulates a specific remedy for breach, the parties are precluded from seeking a remedy outside of the contract's terms. The respondent has always been, and remains, willing to settle any legitimate delay period strictly in accordance with the compensation provisions stipulated in clause 3.3 of the BBA. Accordingly, the complainant's attempt to claim relief beyond the scope of the agreement is untenable and liable to be rejected.

- e) That the present complaint lacks a valid cause of action and constitutes an abuse of the process of law. The complainant has sought to exaggerate routine snagging and last-mile connectivity issues, such as the installation of AC units, gas pipelines, and telephone lines, into alleged fundamental breaches of the apartment buyer agreement. These issues were explicitly noted in the handover checklist executed by the complainant at the time of possession, and it is standard industry practice that such minor matters are addressed by the maintenance agency or respective service providers post-handover. These minor issues do not invalidate the possession or give rise to any entitlement to claim delay possession interest. Accordingly, the filing of this complaint for such inconsequential and known issues amounts to a frivolous attempt to misuse the Authority's time, jurisdiction, and resources, and is liable to be dismissed.

- f) That the calculation of the alleged delay period by the complainant is erroneous, misplaced, and contrary to the express terms of the apartment buyer agreement. The complainant has wrongly ignored the 6-month grace period expressly provided to the respondent under clause 3.1 of the BBA. The said clause clearly stipulates that possession is to be handed over within 42 months from the date of execution of the BBA, with an additional grace period of 6 months, thereby extending the due date to 48 months from the execution date. Accordingly, the correct due date for possession is 12.06.2017, calculated from the execution date of the BBA (12.06.2013), and not 12.12.2016 as contended by the complainant. The complainant's argument to exclude the contractually sanctioned grace period is without merit and represents an arbitrary attempt to unilaterally amend the terms of the agreement to his benefit, contrary to established principles of contract law.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
9. The respondent has filed the written submissions on 01.09.2025, which is taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority

10. 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

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

all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

12. 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)(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.

13. 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 objections raised by the respondent

F.I Objection regarding the complaint is barred by limitation or not?

14. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural Justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

15. It is also observed that the Hon'ble Supreme Court in its order dated **10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020** have held that the period from **15.03.2020 to 28.02.2022** shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
16. In the present case, the respondent states that the cause of action for filing the complaint arose on 24.01.2019, when the offer of possession was made to the complainant. It is pertinent to mention that the respondent initially offered possession of the allotted unit on 24.01.2019. Thereafter, vide email dated 05.03.2019, the respondent informed the complainant that, as discussed and agreed during the meeting held that evening regarding Unit No. T-C/15 01 in Paras Dews, Sector 106, Gurugram, the club membership, one-time additional charges, LPG infrastructure charges, and two years' CAM and club usage charges had been included in the cost of the apartment. The complainant was informed that no separate charges were payable towards club membership, one-time additional charges, LPG infrastructure charges, two years' advance maintenance, or two years' club usage charges. Pursuant thereto, an amendment to the Builder Buyer Agreement was executed between the parties on 11.03.2019.
17. Subsequently, on 27.10.2021, the respondent sent an email to the complainant stating that the flat is ready for handover. This indicates that at the time the offer of possession was made on 24.01.2019, the unit was not fully ready. Accordingly, the respondent carried out the necessary changes as per the complainant's request and re-offered possession on 27.10.2021.
18. The complainant filed the present complaint on 14.08.2024, which is 2 years, 9 months, and 18 days from the date of accrual of the cause of action. In the present matter, the three-year limitation period, even after taking into account the exclusion period from 15.03.2020 to 28.02.2022, would expire on

10.10.2026. In view of the above, the Authority is of the opinion that the present complaint has been filed within a reasonable period of time and is not barred by limitation.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delay possession charges at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the promissory date of delivery of the subject unit i.e., 12.12.2016, till the date of actual realization of delay possession charges;

19. The original allottee namely Ms. Nalini Jolly booked a unit in the project of the respondent namely i.e., "PARAS DEWS" situated in sector- 106, Gurugram. Vide allotment letter dated 10.01.2013, the original allottee was allotted a unit bearing no. T-C/15 01, tower-C, 15th floor, admeasuring super area of 1760 sq. ft. Thereafter, allotment letter was endorsed by the respondent in the favour of the present complainant namely "Mr. Sanjeev Nischal. The complainant and the respondent have entered into an apartment buyer's agreement on 12.06.2013 for the unit no. T-C/15 01, tower C, 15th floor admeasuring super area of 1760 sq. ft. in the project of the respondent namely, "PARAS DEWS" for an agreed basic sale consideration of Rs. 1,07,29,120/- against which complainant paid an amount of Rs. 1,01,78,034/-.
20. As decided in *complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited*, the Authority is of the considered view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.
21. That the complainant intends to continue with the project and is seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 18(1) Proviso reads as under:

Section 18: - Return of amount and compensation

(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.”
(Emphasis supplied)

22. Clause 3.1 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

3.1provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, **the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals.** The commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser.

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

The complainant is seeking delay possession charges. 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, *ibid*. 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.”

24. 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.

25. 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., 13.01.2026 is @ 8.80 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
26. 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;"

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same as is being granted to them in case of delayed possession charges.
28. On consideration of the circumstances, the documents placed on 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 42 months with an additional grace period of 6 months from the date of execution of the agreement (12.06.2013) or date of obtaining all license or approvals for commencement of construction,

whichever is later. The builder buyer agreement was executed between the parties on 12.06.2013 whereas the environmental clearance certificate was obtained by the respondent on 06.09.2013. Therefore, the date of environment clearance being later, the due date of possession was calculated from the date of environment clearance. Accordingly, the due date of possession comes out to be 06.09.2017. The Occupation Certificate for the project was obtained by the respondent/promoter on 15.01.2019. Possession of the allotted unit was initially offered on 24.01.2019 and was subsequently re-offered on 27.10.2021 stating that '*Please note, your flat is ready for handover, we request you to visit your flat & complete the process of possession*'. Keeping in view the aforesaid email dated 27.10.2021, the initial offer of possession dated 24.01.2019 cannot be treated as a valid offer of possession. The Authority is of the considered view that there was a delay on the part of the respondent in offering physical possession of the subject unit and that the promoter failed to fulfil its obligations and responsibilities under the Buyer's Agreement dated 12.06.2013 to hand over possession within the stipulated period.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.80% p.a. w.e.f. 06.09.2017 till the expiry of 2 months from the date of re-offer of possession (27.10.2021) which comes out to be 27.12.2021 or actual handing over of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to not charge any maintenance charges till 31.10.2023 as agreed inter se parties vide amendment to the original buyer's agreement dated 11.03.2019.

G.III. Direct the respondent to install LPG gas pipeline and telephone line as agreed inter se parties.

30. An amendment agreement was executed between the parties on 11.03.2019 and is annexed at page no. 73 of the complaint. Under this amendment agreement dated 11.03.2019, certain terms and conditions of the earlier agreement were modified, wherein it was specifically stated that the LPG infrastructure charges, One Time Additional Charges, Club usage Charges and two years' maintenance charges are included in the sale consideration.
31. As delineated hereinabove, the respondent sent an email dated 27.10.2021 to the complainant stating that the flat was ready for handover which indicates that initially at the time the offer of possession on 24.01.2019, the unit was not fully ready. Accordingly, the respondent carried out the necessary changes and re-offered possession on 27.10.2021. It is settled position that maintenance charges are payable after offer of possession. Thus, as the possession was again re-offered on 27.10.2021, the maintenance charges are payable from re-offer of possession. Thus, keeping in view the above facts and circumstances, the respondent is directed to charge maintenance charges only from the date of valid re-offer of possession i.e., 27.10.2021. However, in light of the amendment agreement dated 11.03.2019, wherein it has been expressly agreed between the parties that two years' maintenance charges are included in the sale consideration, the respondent shall not levy or recover any maintenance charges for a period of two years from the said date of re-offer of possession i.e., 27.10.2021. Accordingly, the respondent is restrained from charging maintenance charges up to 26.10.2023.
32. With respect to the prayer regarding installation of LPG gas pipeline and telephone line, the Authority observes that as per the amendment agreement dated 11.03.2019, the respondent had undertaken to provide LPG infrastructure as part of the agreed facilities and charges for the same are already included in the sale consideration. Therefore, the respondent is directed to ensure installation and commissioning of the LPG gas pipeline, if

not already provided, within a period of 30 days from the date of this order, in accordance with the amendment agreement dated 11.03.2019.

G.IV Direct the respondent to provide a dedicated and designated car parking space to the complainant as per BBA dated 12.06.2013.

33. The complainant submitted that, as per clause 2.2 of the buyer's agreement dated 12.06.2013, he purchased one car parking slot along with the subject unit and specifically paid Rs. 3,00,000/- towards car parking charges. The respondent submitted that clause 2.12 of the buyer's agreement confers only a "right of usage" of one car parking space to the complainant, which has been duly provided within the common areas of the project. The BBA does not guarantee a separately demarcated or registered car parking slot.
34. The Authority observes that clause 2.2 of the buyer's agreement only mentions the rate for car parking. As per clause 2.12 of the buyer's agreement, the seller has reserved one car parking space for 2/3 BHK units and two car parking spaces for 4 BHK units and penthouses, which shall be allotted to the purchaser. The car parking space shall be marked at the time of possession, subject to statutory rules and regulations. The purchaser understands that the purchase entitles him only to the right of usage of the said car parking space.
35. In view of the above, since Clause 2.12 provides that the car parking space shall be marked at the time of possession, the respondent is directed to designate and mark a specific car parking space for the complainant.

G.V Direct the respondent promoter to provide the four split AC unit, as agreed inter se vide buyer's agreement dated 12.06.2013.

36. The complainant submitted that, under the buyer's agreement dated 12.06.2013, the respondent promised to provide four split AC units. This is clearly mentioned in Annexure II of the buyer's agreement and is also reflected in the apartment checklist dated 31.10.2021. In its reply, the respondent submitted that issues relating to the installation of the AC units were noted in the handover checklist executed by the complainant at the time of possession. It was further stated that it is standard industry practice for such minor issues

to be addressed by the maintenance agency or respective service providers post-handover, and that these minor issues do not invalidate the possession.

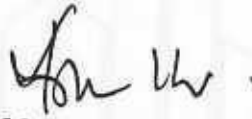
37. The Authority observes that the provision of split AC units was promised in the buyer's agreement as is evident from Annexure II to the buyer's agreement. Therefore, the respondent is directed to provide split AC units to the complainant as agreed inter se vide buyer's agreement dated 12.06.2013.

H. Directions of the Authority

38. 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) of the Act:

- I. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession, i.e., 06.09.2017 till the date of re-offer of possession (27.10.2021) plus two months i.e., 27.12.2021 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, *ibid*. The arrears of 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*.
- II. 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- III. The respondent is directed to charge maintenance charges w.e.f. 27.10.2023.

- IV. The respondent is directed to ensure installation and commissioning of the LPG gas pipeline, if not already provided, within a period of 30 days from the date of this order, in accordance with the amendment agreement dated 11.03.2019.
- V. The respondent is directed to designate and mark a specific car parking space for the complainant as per clause 2.12 of the buyer's agreement dated 12.06.2013.
- VI. The respondent is directed to provide split AC units to the complainant as agreed inter se vide buyer's agreement dated 12.06.2013.
- VII. The respondent shall not charge anything from the complainant which is not part of the agreement.
39. Complaint stands disposed of.
40. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
13.01.2026