

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

Date of Order: 27.01.2026

NAME OF THE BUILDER		EMAAR MGF LAND LIMITED	
PROJECT NAME		"COLONNADE"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1427/2024	Hitesh Makhija V/S Emaar MGF Land Limited	Sh. Abhinav Arora Advocate for complainant Sh. Harshit Batra Advocate for respondent
2.	CR/1428/2024	Hitesh Makhija V/S Emaar MGF Land Limited	Sh. Abhinav Arora Advocate for complainant Sh. Harshit Batra Advocate for respondent

CORAM:Shri Arun Kumar
Shri Phool Singh Saini**Chairman**
Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority 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 allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Colonnade" (Commercial Colony) being developed by the same

respondent/promoter i.e., Emaar MGF Land Limited. The terms and conditions of the application for the provisional allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delayed possession charges along with interest and others.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in a table below:

Project Name and Location	Emaar MGF Land Limited at "Colonnade" situated in Sector-66, Gurugram	
Occupation Certificate: 31.03.2022		
Complaint No., Case Title	CR/1427/2024 Hitesh Makhija V/S Emaar MGF Land Limited	CR/1428/2024 Hitesh Makhija V/S Emaar MGF Land Limited
Reply status	28.08.2024	28.08.2024
Unit no.	CHC R-01-063, 1 st floor [As per page no. 60 of the complaint]	CHC R-01-078, 1 st floor [As per page no. 58 of the complaint]
Area admeasuring	509 sq. ft. (super area) [As per page no. 60 of the complaint]	284.58 sq. ft. (super area) [As per page no. 58 of the complaint]
Date of execution of buyer's agreement	17.03.2017 [As per page no. 31 of the complaint]	17.03.2017 [As per page no. 29 of the complaint]
Due date of handing over of possession	August, 2020 [Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.] (Inadvertently mentioned as February, 2020 in	August, 2020 [Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.] (Inadvertently mentioned as February, 2020 in

	proceedings of the day dated 24.07.2025)	proceedings of the day dated 24.07.2025)
Date of cancellation	29.01.2024 [As per page no. 58 of the complaint]	29.01.2024 [As per page no. 139 of the reply]
Total Consideration / Total Amount paid by the complainant	TSC: Rs.45,08,907/- (As per customer ledger dated 14.07.2024 on page no. 65 of the complaint) AP: Rs.25,86,469/- (As per customer ledger dated 14.07.2024 on page no. 65 of the complaint)	TSC: Rs.26,23,476/- (As per SOA dated 05.01.2024 on page no. 54 of the complaint) AP: Rs.15,29,764/- (As per SOA dated 05.01.2024 on page no. 54 of the complaint)
Compensation credited on offer of possession	Rs.1,48,058/- (As per page no. 2 of the reply to the application u/s. 36 filed by the complainant)	Rs.87,847/- (As per page no. 3 of the reply to the application u/s. 36 filed by the complainant)

The complainant in the above complaint(s) has sought the following reliefs:

1. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.
2. Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession.
3. Direct the respondent to set aside the cancellation of unit notice and also to not create any third-party rights on the said unit.
4. Direct the respondent to accept the further amount due from the complainant.
5. Direct the respondent not to charge any penalty/ interest from the complainant.
6. Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant.
7. Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.
8. The Authority to take the action against the respondent, as the respondent has misled the complainant by executing the BBA based on the super area and has never made any clarification on the actual carpet area through any communication till date.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the project of the respondent/builder and for not

handing over the possession by the due date, seeking delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1427/2024 titled as Hitesh Makhija V/S Emaar MGF Land Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Colonnade", Sector 66, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	2.25 acres
4.	DTCP license no.	163 of 2008 dated 19.08.2008 valid up to 18.08.2020
5.	Name of licensee	Logical Developers Pvt. Ltd
6.	RERA Registered/ not registered	156 of 2017 dated 28.08.2017 valid up to 31.01.2028
7.	Unit no.	CHC R-01-063, 1 st Floor (As per page no. 60 of the complaint)

		(Unit no. has been changed to CHC R-01-063, 1 st Floor from CHC R-UGF-063, Upper Ground Floor)
8.	Unit area admeasuring	509 sq. ft. (Super area) (As per page no. 60 of the complaint) (Area has been changed to 490.43 sq. ft. from 509 sq. ft.)
9.	Allotment letter	14.04.2015 (As per page no. 21 of the complaint)
10.	Date of buyer's agreement	17.03.2017 (As per page no. 31 of the complaint)
11.	Possession clause	16. POSSESSION (a) Time of Handing over the possession: <i>The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession")</i> (As per page no. 45 of the complaint)
12.	Date of start of construction	29.05.2017 (As per page no. 65 of the complaint)
13.	Due date of possession	August, 2020 (Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated

		26.05.2020 for the projects having completion date on or after 25.03.2020.) (Inadvertently mentioned as February, 2020 in proceedings dated 24.07.2025)
14.	Total sale consideration	Rs.45,08,907/- (As per customer ledger dated 14.07.2024 on page no. 65 of the complaint)
15.	Amount paid by the complainant	Rs.25,86,469/- (As per customer ledger dated 14.07.2024 on page no. 65 of the complaint)
16.	Legal Notice for possession and compensation	23.08.2021 (As per page no. 67 of the complaint)
17.	Occupation Certificate	31.03.2022 (As per page no. 119 of the reply)
18.	Offer of possession	14.07.2023 (AS per page no. 60 of the complaint)
19.	Final notice letter/reminder letter	09.10.2023 & 05.01.2024 (As per page no. 130 & 132 of the reply)
20.	Cancellation notice	29.01.2024 (As per page no. 58 of the complaint)
21.	Compensation credited on offer of possession	Rs.1,48,058/- (As per page no. 2 of the reply to application u/s 36 filed by the complainant)

B. Facts of the complaint:

8. The complainant has made the following submissions:
- I. That the complainant is a law-abiding citizen of India and currently residing at 2nd Floor, 9/10 Indira Vikas Colony, Near Mukherjee Nagar, Delhi-110009.
 - II. That the respondent company announced the takeover of the commercial colony project "Colonnade" from "Baani The One" in 2012, located at Sector 66, District Gurugram, Haryana, under license no. 153 of 2008 issued by DTCP, Haryana, Chandigarh.

- III. That the complainant initially booked a unit from Baani Group, which was later transferred to the respondent and the same has been confirmed by the respondent on 22.04.2015.
- IV. That relying on representations and assurances by the respondent, the complainant was allotted a unit in the project on 14.04.2015, confirmed via email of provisional allotment.
- V. That the builder buyer's agreement was executed between the complainant and the respondent on 17.03.2017, with a commitment to hand over possession by January 2020, as per clause 16 (a) (i) of the BBA.
- VI. That the complainant made timely payments towards all demands raised by the respondent between the time of booking and in 2020.
- VII. That the respondent failed to deliver possession by the agreed-upon date and did not provide reasons despite multiple attempts by the complainant to contact them.
- VIII. That after sending a legal notice dated 23.08.2021, demanding refund/interest/compensation and damages, there was no response from the respondent.
- IX. That the respondent suddenly offered possession to the complainant without addressing concerns regarding project delay and lack of communication.
- X. That the respondent demanded Rs.22,99,540/- contrary to the agreed payment plan, without addressing the complainant's objections.
- XI. That despite attempts to contact the respondent, they continued to demand further payments without addressing the complainant's concerns.

- XII. That upon inquiry, the respondent informed the complainant that their unit had been cancelled arbitrarily vide notice dated 29.01.2024.
- XIII. That the carpet area was never disclosed to the complainant and the location and floor of the unit were changed without prior approval, leading to financial loss and disappointment.
- XIV. That the complainant paid PLC charges of Rs.700/- per sq. ft. which became futile due to the changes in the layout and the floor made by the respondent. The demands for delayed payment, maintenance charges, and other fees were imposed arbitrarily, causing harassment to the complainant.
- XV. That the respondent failed to provide satisfactory response regarding the status of the agreement, construction progress, and delivery of possession despite repeated inquiries by the complainant.
- XVI. That the complainant was not permitted to visit the construction site despite several requests, leading to loss of time and money invested.
- XVII. That due to the respondent's actions, the complainant approached the Hon'ble Authority seeking redressal of grievances and relief.
- XVIII. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the



- services/utilities as promised in the brochure or through not delivering the project in time.
- XIX. That the complainant is the one who has invested his life-savings in the said project and are dreaming of a unit for themselves and the respondent has not only cheated and betrayed him but also used his hard-earned money for their enjoyment.
- XX. The complainant after losing all the hope from the respondent company, having his dreams shattered of owning a shop & having basic necessary facilities in the vicinity of the Colonnade project and also losing considerable amount, is constrained to approach this Hon'ble Authority for redressal of his grievance.
- XXI. That the present complaint is within the prescribed period of limitation. The complainant has not filed any other complaint before any other forum against the respondent and no other case is pending in any other court of law. Hence, the present complaint.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent to set aside the cancellation of unit notice and also to not create any third-party rights on the said unit.
 - ii. Direct the respondent to accept the further amount due from the complainant.
 - iii. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.
 - iv. Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of



- the said unit from the due date of possession till the date of delivery of possession.
- v. Direct the respondent not to charge any penalty/ interest from the complainant.
 - vi. Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant.
 - vii. Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.
 - viii. The Authority to take the action against the respondent, as the respondent has misled the complainant by executing the BBA based on the super area and has never made any clarification on the actual carpet area through any communication till date.

D. Reply by the respondent:

10. The respondent has contested the complaint on the following grounds:
- a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.03.2017, as shall be evident from the submissions made in the following paras of the present reply.
 - b. That the complainant is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The possession was offered to the complainant on 14.07.2023. The complainant has refrained from taking the possession of the unit in question due to his own selfish motives,



- based on incorrect facts, interpretation and is now trying to take undue advantage of clerical mistakes.
- c. That the complainant is in default of their obligations under the agreement and as such has disentitled himself from claiming any relief under the said agreement.
 - d. That the complainant being interested in the commercial complex developed by the respondent known as "Colonnade" approached the respondent to purchase the unit and upon his application for allotment of the unit was allotted a unit bearing no. UGF-063 on Upper Ground floor tentatively admeasuring super area of 509 sq. ft. vide allotment letter dated 14.04.2015.
 - e. That thereafter, a buyer's agreement was sent to the complainant on 30.05.2016 for signing the same however after multiple reminders the complainant finally executed the buyer's agreement on 17.03.2017. The complainant delayed in the execution of the BBA and respondent sent multiple reminders to send the signed copies of the agreement. It is pertinent to mention that the BBA was consciously and voluntarily executed and the terms and conditions of the same are binding on the parties. It is submitted that the buyer's agreement dated 17.03.2017 was executed with the complainant for unit 'CHC R-UGF-063' whereas it was specifically mentioned in the annexure 5 of the buyer's agreement that the upper ground floor plan was approved as a 1st floor in the building plan, leading to change in nomenclature. According to the approved building plans there were revisions/ modifications leading to the change in nomenclature of the floors from Lower Ground Floor (LGF), Upper Ground Floor (UGF), First Floor (FF) and Second Floor (SF) to Ground Floor (GF), First Floor (01), Second Floor (02) and

Third Floor (03), respectively. In view thereof, the respondent's unit has not actually been shifted/changed but only the nomenclature has been altered as 'CHC-R-01-063' instead of earlier 'CHC-R-UGF-063.

- f. That being a contractual relationship, reciprocal promises are bound to be maintained. It is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- g. That the complainant is a habitual defaulter who has been in default of payments since the very beginning. The complainant had made last payment on 26.04.2019 i.e., at the stage of on casting of Second Basement Roof Slab after a delay of approx. 2 years and thereafter stopped making payment of the instalments. The complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent.
- h. That without prejudice to the contentions of the respondent, it is most humbly submitted that the respondent has ensured its utmost *bonafide* and lawful conduct since the very beginning. There is no delay in the development of project, which was duly, timely, efficiently and effectively completed as per the agreed timelines. As per clause 16 of the agreement, the respondent proposed to offer the possession of the unit within 42 months from Aug 2016 or date of start of construction i.e., 29.05.2017, whichever is earlier, plus grace period of 4 months subject to the allottees having complied with all the terms and conditions of the agreement. It is further provided in the buyer's agreement that time period for delivery of possession

shall stand extended on the occurrence of delay for reasons beyond the control of the respondent. It is submitted that the complainant has defaulted in timely remittance of the instalments and hence the date of delivery option is not liable to determine the matter sought to be done by the complainant. The complainant is conscious and aware of the said agreement and has filed the present complaint to harass the respondent and compel the respondent to surrender to his illegal demands. It is submitted that the filing of the present complaint is nothing but an abuse of the process of law.

- i. That the respondent was faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done.
- j. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020 recognized

that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. It is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide order dated 26.05.2020 on account of 1st wave of COVID-19 pandemic. The said lockdown was imposed in March, 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

k. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent builder. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 17(ii), however, despite all the hardships faced by the respondent, the respondent did not suspend



the construction and managed to keep the project afloat through all the adversities.

- i. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 10.12.2021 and the same was thereafter issued by the concerned statutory authority in favour of the respondent on 31.03.2022. It is pertinent to note that once an application for grant of Occupation Certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.
- m. That even after the defaults of the complainant the respondent completed the construction of the unit and offered the possession of the unit to the complainant on 14.07.2023 and earnestly requested the complainant to take possession of the unit after remittance of the balance sales consideration of the unit. It is categorically submitted that the respondent had also paid compensation on the offer of possession amounting to Rs.1,48,058/- to the complainant at the time of offer of possession however, the complainant failed to take the possession of the unit.



- n. That the building plan of the project was proposed to be revised and the respondent received the in-principle approval of the building plan dated 02.09.2020 thereafter, letters inviting objection/suggestion for approval of revised building plan were sent to the complainant on 13.06.2019 and 14.09.2020. No objections were received from the allottees hence, the building plan was revised on 20.08.2021.
- o. That the complainant failed to make timely payment of the instalments as evident from the table above. The complainant was served a pre-cancellation notice dated 09.10.2023 and 05.01.2024. The complainant was duly communicated that the failure to abide by the pre-cancellation letter and remittance of the balance sale consideration of the unit within 30 days from the date of receiving the notice, the respondent shall have the right to cancel the allotment of the complainant and forfeit the amount as per the terms and condition of the agreement. However, the complainant failed to abide by the pre-cancellation letters sent to him hence, the respondent was constrained to cancel the allotment of the complainant and the same was communicated to the complainant along with the calculation of forfeiture amount of the unit vide cancellation letter dated 29.01.2024.
- p. That after termination of the allotment of the unit of the complainant, the complainant has been left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the complainant, solely due to the default of the complainant, the respondent is well within the right to forfeit the earnest amount along the delayed payment interest till the date

of termination and other non-refundable amount including the statutory dues paid against the unit.

- q. That the facts and circumstances of the present complainant reveal that the complainant is not eligible for possession of the unit or any delay possession charges. The allotment of the complainant stands cancelled, thus, the present claim against the respondent-company is infructuous. Hence, the complaint is liable to be dismissed.

11. 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.

E. Jurisdiction of the authority:

12. 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

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

E.II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34: Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 regarding the circumstances being 'force majeure':

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as COVID-19 outbreak, certain environment restrictions, weather conditions in NCR region and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees.



Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to set aside the cancellation of unit notice and also to not create any third-party rights on the said unit.**
- G.II Direct the respondent to accept the further amount due from the complainant.**

15. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.
16. In the instant complaint, the unit of the complainant was cancelled by the respondent vide cancellation notice dated 29.01.2024 on account of non-payment of outstanding dues. The counsel for the respondent vide proceedings of the day dated 24.07.2025 that the respondent is willing to reinstate the unit and handover the possession after payment of outstanding amount along with interest on delayed payments. The counsel for the complainant also confirmed during the proceedings dated 24.07.2025 that the complainant is also willing to take the physical possession of the allotted unit and to pay the outstanding amount after adjustment of delayed possession charges.
17. In view of the above-stated facts, the cancellation notice dated 29.01.2024 is set-aside and the respondent is directed to reinstate the allotted unit of the complainant within a period of 30 days from the date of this order.
18. The respondent is further directed to issue a revised SOA after the adjustment of delayed possession charges. The complainant is directed to pay the outstanding amount, if any, after the adjustment of delayed possession charges in next 30 days from the date of issuance of revised SOA. The interest on outstanding amount towards the complainant/allottee shall be levied by the respondent-promoter at an equitable rate of interest.

- G.III Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.
- G.IV Direct the respondent to pay the interest on account of delay in offering possession paid by the complainant as sale consideration of the said unit from the due date of possession till the date of delivery of possession.
- G.V Direct the respondent not to charge any penalty/ interest from the complainant.

19. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

20. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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

21. Clause 16(a) of buyer's agreement dated 17.03.2017 provides for handing over of possession and is reproduced below:

a) Time of Handing over the possession:

(i) The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession")

22. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within 42 months from August, 2016 with grace period of 4 months. Thus, the due date of possession comes to June,

2020. But as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, a grace period of six months has been allowed by the Authority. Therefore, the due date of possession comes to August, 2020.

23. 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, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

24. 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.

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., 27.01.2026 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(z a) 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.

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over of possession is August, 2020 but the offer of possession was made on 14.07.2023. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of handing over the possession i.e., August, 2020 till offer of possession (14.07.2023) after obtaining occupation certificate plus two months i.e., 14.09.2023 at prescribed rate i.e., 10.80 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. The amount of Rs.1,48,058/- already paid on account of compensation shall be adjusted.

G.VI Direct the respondent to refund the PLC charged, along with interest, as no Preferential Location has been given to the complainant.

G.VII Direct the respondent to provide damages or compensation or partial refund, along with prevailing rate of interest, on the account of changing of the floor without approval.

29. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

30. The Authority has gone through the apartment buyer's agreement dated 17.03.2017 and observed that as per payment plan (Annexure-III) on page no. 81 of the reply total sale consideration includes basic sale consideration, Preferential Location Charges(PLC), External Development charges(EDC), Internal Development charges(IDC) and IFMS. In clause 2.2(d) of the buyer's agreement, it is mentioned that due to change/revision in layout/building plan if the unit ceases to be preferentially located, then the respondent company shall be liable to refund/adjust the amount of PLC without interest. The respondent has mentioned in the facts of the complaint that the complainant has paid an amount of Rs.700/- sq. ft. as PLC charges which became futile due to changes in the layout and the floor made by the respondent.

31. First of all the buyer's agreement is a pre-RERA agreement and after going through the pleadings of the complainant and relevant clauses of apartment buyer's agreement dated 17.03.2017, the Authority has observed that the afore-mentioned charges are specifically agreed between the parties, thus the respondent can charge as per the agreed terms of the buyer's agreement dated 17.03.2017.

G.VIII The Authority to take the action against the respondent, as the respondent has misled the complainant by executing the BBA based on the super area and has never made any clarification on the actual carpet area through any communication till date.

32. In the present complaint, the buyer's agreement was executed on 17.03.2017 which was executed prior to the commencement of the Act 2016. Also, the concept of carpet area was introduced by way of model buyer's agreement as mentioned in Rules, 2017 after the commencement of the Act ,2016, there is no obligation on the respondent that the sale consideration has to be calculated on the basis of the carpet area only and there is no document on record which shows that the complainant has

ever sought any clarification on the carpet area of the unit from the respondent. Moreover, the complainant has agreed to the terms and conditions of the agreement dated 17.03.2017 and the said agreement being a pre-RERA agreement, the Authority cannot intervene in the same. Thus, no direction to this effect.


H. Directions of the Authority:

33. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.80% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. August, 2020 till 14.07.2023 i.e., expiry of 2 months from the date of offer of possession (14.09.2023). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
 - ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of delayed possession charges. The respondent is directed to handover possession of the allotted unit on payment of outstanding dues by the complainant.
 - iii. The respondent is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.



- iv. 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.
- v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by **Hon'ble Supreme Court in Civil Appeal Nos. 3864-3889/2020** decided on **14.12.2020**.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
36. Files be consigned to the registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 27.01.2026