

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

Complaint no.: 2785 of 2025
Date of filing of complaint: 17.06.2025
Date of order: 12.02.2026

1. Mrs. Sabnam Sharma
2. Mr. Sameer Sharma

Both RR/o: - Flat Ni. B-612, 3rd Floor, Ansal Esencia,
Sector- 67, Badshapur, Gurugram, Haryana- 122101

Complainants

Versus

M/s Shine Buildcon Private Limited

Corporate office: Plot No. 281, Udyog Vihar, Phase-II,
Gurugram, Haryana

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Bhajan Lal Jangra (Advocate)

Complainants

Shri Akshat Mittal (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the date of proposed handing over of the possession, and the



delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid up to 30.06.2022
7.	Unit no.	B-123, First floor (Page no. 31 of complaint)
8.	Unit area admeasuring	372 sq. ft. (Super Area) (Page no. 31 of complaint)
9.	Allotment Letter	28.08.2015 (Page no. 26 of complaint)
10.	Date of execution of BBA	28.01.2016 (Page no. 29 of complaint)
11.	Building plan approval	03.05.2013 (taken from another complaint CR/5702/2023 of same project disposed off vide order dated 04.07.2024)
12.	Payment Plan	Possession linked plan (Page no. 73 of complaint)
13.	Possession clause	Clause 13. POSSESSION AND HOLDING CHARGES <i>"(ii) subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total price/sale Consideration, taxes, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said shop to the Allottee within a period of 42 months from the date of signing this</i>



		<i>agreement or approval of building plans whichever is later ("Committed Period"). The Allottees further agrees and understands that the company shall additionally be entitled to a grace period of 6 months, after expiry of the said Commitment period to allow for unforeseen delays beyond the reasonable control of the company.</i> (Page no. 51 of complaint)
14.	Due date of possession	28.01.2020 (Note: - Due date of possession calculated from the date of execution of buyer's agreement i.e., 28.01.2016 being later + 6 months grace period of Covid-19)
15.	Basic Sale Price	Rs.34,41,000 /- (As per BBA at page no. 74 of complaint)
	Total sale consideration	Rs.41,04,850/- (As per BBA at page no. 74 of complaint)
16.	Amount paid by the complainant	Rs.27,67,887/- (As per statement of account at page 75 of the complaint)
17.	Occupation certificate	10.10.2023
18.	Offer of possession	15.10.2023 (Page no. 76 of complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:
- That the complainants being joint allottee(s) of the unit bearing no. B-123 at 70 Grandwalk, Gurugram and well conversant with the facts of the present case hence competent to sign, verify and file and pursue the present complainant before this Authority for seeking delay possession charges, quashing illegal demands/charges imposed by the respondent under various head.
 - That the respondent is a registered company which had undertaken to develop the project namely "70 Grandwalk at sector 70 in Gurugram" consisting of shops, one room/two room/three room/, managed services studios, multiplex, food court/restaurant, retail and entertainment area. The



project was to be developed over the land Rect. No. 89, Killa No. 14(8-0), Killa no. 15(2-9), Killa no. 16(2-9), Killa no. 17(7-16), Killa no. 25(2-9), located at Sector -70, Village Badhshapur, Distt. Gurugram, Haryana. The respondent represented that DTCP granted Licence bearing no. 34/2012 to develop the said project.

- c) That as per the representation, assurance, promises given by the respondent the complainant signed a booking application dated 19.05.2015 for booking a shop in the said project. That in response to the booking application, the respondent issued an allotment letter dated 28.08.2015 whereby the shop bearing no. unit bearing no. B-123 on 1st floor having area of 372 sq. Feet was allotted. It is submitted that as per the annexure A of the allotment letter the total sale consideration of the unit was Rs.41,04,850/-.
- d) That subsequent to the allotment letter dated 28.08.2015 the respondent signed a buyer agreement for shop dated 28.01.2016 wherein all the terms and conditions mentioned and project was to be completed within 42 months from date of signing of the agreement i.e. 27.07.2019 which stood expired.
- e) That the respondent kept sending illegal demands upon the complainant without achieving the milestone as per the agreement thereby the complainant was compelled to pay the said illegal demand under threat of cancellation and forfeiture of sale consideration therefore the complainant paid demand as and when received from the respondent. The complainant had already paid sum of Rs.27,67,887/- as on 11.04.2018 which was acknowledged and received by the respondent.
- f) That offer of possession of the said shop was sent by the respondent on 15.10.2023, along with statement of account whereby the complainant was informed that occupation certificate of the project has been received and complainant was called upon to complete the formalities before taking physical possession of the shop.

- g) That offer of possession of the said shop was sent by the respondent on 15.10.2023 along with statement of account whereby the complainant was informed that occupation certificate of the project has been received and complainant was called upon to complete the formalities before taking physical possession of the shop.
- Additional Basic Charge of Rs.1,72,050/-
 - EEC/FFC Charges of Rs.55,800/-
 - Specification Improvement Charges of Rs.37,200/-
 - Interest of Rs.79,552/- and Rs.3,99,587/-

That total amount raised by the respondent to the tune of Rs.7,44,189/- which is illegal and without any justification from the respondent, therefore, the complainant cannot be compelled to pay the said amount.

- h) That the complainant sent the mail to the respondent disputing the illegal demands of Rs.7,44,189/- through e-mail dated 11.12.2023 but no reply was sent by the respondent. Contents of e-mail dated 11.12.2023 are reproduced here: -

*"From: Sabnam Sharma <sabnam_sharma@yahoo.co.in>
Date: Mon, 11 Dec, 2023, 4:33 pm
Subject: Re: Demand of "Offer of Possession" of your Unit No. B-123, Second Floor at 70 Grandwalk, Sector -70, Gurugram, Haryana.
To: 70gw Projects <70gw@tapasyagroup.in>
Cc: Sameer Sharma <hisameer30@gmail.com>, Sabnam Sharma <sabnam_sharma@yahoo.co.in>*

*PFA
CORRECTION*

*Dear Team,
Greetings*

We need to understand the following charges mentioned in the Offer of Possession:

- 1. Additional Basic Charge of Rs.1,72,050/- (What type of charges are these, kindly make us understand?)*
- 2. EEC/FFC Charges of Rs.55,800/- (What type of charges are these, kindly make us understand?).*
- 3. Specification Improvement Charges of Rs. 37,200/- (What type of Charges are these, kindly make us understand?).*
- 4. An Interest of Rs.79,552/- has been mentioned @ 18% (Kindly make us understand this calculation? and reason of why this has been incurred upon us?).*



5-Entry of Amount of Rs.3,99,587 has no justification.

Regards

Sabnam Sharma"

- i) That the project was to be completed and handed over within 42 months from date of signing of agreement failing which the respondent under obligation to compensate the complainant by making interest on principal amount but the respondent neglected to make the same rather imposed huge amount upon the complainant without any justification hence the respondent is guilty of unfair trade practice.
- j) That the complainant visited to the office of the respondent and put his claim as delay possession charges on account of delay in handing over the possession and for execution of conveyance deed but the respondent flatly refused the request.
- k) That for the reason stated above, the complainant is/are left with no other efficacious remedy available except to file the present complaint before the Authority for seeking delay possession charges, quashing illegal demand of Rs.7,44,189/- and physical possession of the shop by way of conveyance deed.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):
 - i. Direct the respondent to quash the illegal demands of Rs.7,44,189/- raised at the time of offer of possession.
 - ii. Direct the respondent not to imposed holding charges.
 - iii. Direct the respondent to handover the allotted shop bearing no. B-123, to the complainant without imposing any illegal charges upon the complainants.
 - iv. Direct the respondent to execute the conveyance deed of the allotted shop.
 - v. Direct the respondent to pay interest on the principal amount at prevailing rate of interest from 27.07.2019 till handover the possession of the shop.



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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds:

a) That it is extremely important to highlight that the complaint has been filed with unclean hands coupled with deliberate concealment of relevant facts and aimed at fraudulently misleading to this Authority. It is submitted as follows: -

➤ That the complainants have concealed the very vital fact that a discount of Rs.59,520/- was granted by the respondent promoter to the complainants for the delay in possession. The factum thereto can be verified from the perusal of the statement of account attached along with the offer of possession dated 15.10.2023.

➤ That vide letter dated 08.08.2022, the respondent had duly informed the complainants that only the finishing work is left and the same would be ready for possession within 3 to 4 months.

➤ That the entire work had been completed by the end of the year 2022, and occupation certificate had already been applied on 07.02.2023. But this entire factum has been concealed by the complainants in the complaint under reply. Despite knowing that the unit is complete, the complainant has deliberately tried to mislead the Authority by mentioning the status of the project as 'Incomplete', in the complaint.

It is a settled principle of law that no relief accrues in favour of a litigant approaching Court with unclean hands and as such, the complaint is liable to be outrightly dismissed on this score alone.

b) That the complainant herein is an investor and the property has been purchased for the purpose of real estate investments and financial gains



therefrom. The present complaint is a luxury litigation seeking uncalled for gains, which must be curbed by this Authority, and a genuine promoter making genuine efforts should be protected.

- c) That it is submitted that the **due date of possession i.e. 01.09.2020 (calculated as 48 months w.e.f. 01.09.2016 - approval of revised building plan) was tentative and subject to force majeure circumstances.** It is hereby submitted that during the intervening period, the development of the project got decelerated owing to the reasons beyond the control of the respondent promoter. The same includes the effect the pandemic (COVID-19), the pauses on construction effected by the National Green Tribunal from time to time, and directions of other Authorities and Courts. The details of the ban on construction activities vide various directions of the National Green Tribunals or the Statutory Authorities etc. are highlighted in the table below:

Sr. No	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /08.11.2016 & 10.11.2016	Vardhman Kaushik Vs. Union of India	08.11.2016 - 16.11.2016 (8 days)
2.	National Green Tribunal /09.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 - Ban was lifted after 10 days (10 days)
3.	National Green Tribunal /18.12.2017	Vardhman Kaushik Vs. Union of India	18.12.2017 - 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018	Order/Notification dated 14.06.2018	14.06.2018 - 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note - 29.10.2018 and later extended till 12.11.2018	01.11.2018-12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 - 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 - 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA-Dr.BhureLal, Chairman	Complete Ban	01.11.2019 - 05.11.2019 (5 days)
9.	Supreme Court - 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985	04.11.2019 - 14.02.2020 (3 months 11 days)



10.	Ministry of Housing & Urban Affairs, Government of India - Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
TOTAL			1.4 years (approx.)

- d) As such, the said period of approximately 1.4 years during the intervening period of construction, which clearly has impacted/decelerated the construction, may kindly be taken as a Zero period for calculation of the alleged delay, if any, in completion of the unit in question.
- e) That further, in accordance with the provisions of the agreement entered into voluntarily between the parties, the dispute/differences, if any, which could not be settled amicably, must be settled through the intervention of a sole arbitrator by virtue of clause 33 of the agreement. It is submitted that as per the terms of the buyer's agreement.
- f) That further, the bona fides on the part of the answering respondent may kindly be taken into consideration. It is submitted that: -
- That the respondent company is a genuine promoter working in the interest of its allottees and have duly completed the project and offered the possession.

It is hereby relevant to mention that the Hon'ble Bombay High Court in the Writ Petition titled 'Neelkamal Realtors Suburban Pvt. Ltd. & Ors. Vs. Union of India and others (W.P. 2737 of 2017)' has observed that "*unless a professional promoter making genuine efforts is not protected, then very purpose of development of real estate Sector would be defeated*".

It is submitted that the Authority may kindly take into account the aspect that the respondent company is a professional promoter and was making every genuine effort and should therefore be protected from such luxury litigations, failing which, the very purpose of the real estate sector would be defeated.



- That the respondent company has ensured completion of the project in question despite several hurdles which crept in the way of completion of the project from time to time, as enumerated above.
- The respondent had duly intimated the complainant about the exact status of the project alongwith photographs being attached thereto.
- The respondent has already completed the unit in all respects and the shop stood absolutely ready for possession prior to 07.02.2023. The occupation certificate had been duly applied for vide application dated 07.02.2023, and has also been duly received on 10.10.2023.
- The respondent had on its own accord, offered a discount of Rs. 59,520/- to the complainants herein, for the delay in possession, if any.
- The respondent, despite receiving only Rupees 45 Crore from the allottees of the project had invested an amount of Rupees 120 Crore towards completion of the project.
- The respondent has already deposited the External Development Charges (EDC) and Internal Development Charges (IDC) of the ENTIRE PROJECT in full to the concerned department, despite receiving less amount from the allottees, so as to avoid imposition of any kind of penalty, fine or charges upon its customers, which is the responsibility and liability on the part of the customers in respect of their individual units.
- The payments were demanded in accordance with the construction linked payment plan and no loss had been caused to the allottees.

It is submitted that the bonafides are more relevant in the light of the fact that the real estate market is going through a bad phase, with most of the real estate projects in the country facing financial crises with the allottees thereto also having defaulted in their payments.



7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



F. Findings on the objections raised by the respondent:**F.I Objections regarding force majeure.**

12. The respondent-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court and COVID-19. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent/builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the respondent/promoter cannot be given any leniency on the basis of aforesaid reasons.
13. The respondent/promoter further alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, orders of the Hon'ble NGT prohibiting construction in and around Delhi, various other court orders and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 28.01.2016 and as per terms and conditions of the said agreement the possession of the said shop to the allottee within a period of 42 months from the date of signing of this agreement or approval of building plans whichever is later. and further additionally be entitled to a period of 6 months as Grace period. In the present matter, the date of building plan approved on 03.05.2013, and the buyer's agreement was executed inter se parties on 28.01.2016. Thus, the 42 is calculated from the date of execution of buyer's agreement being later i.e., 28.01.2016 comes out to 28.07.2019. Further, grace period of 6 months is allowed to the respondent being unqualified and unconditional for the force majeure. Thus, the due date of handing over possession comes out to be 28.01.2020. The events such as demonetization and



various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous. Hence, in view of aforesaid circumstances, no further grace period can be allowed to the respondent/builder to the above said period. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the respondent/promoter cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

14. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/2020 and I.As 3696-3697/2020 dated 29.05.2020* has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

15. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 28.01.2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on relief sought by the complainant.

- G. I Direct the respondent to quash the illegal demands of Rs.7,44,189/- raised at the time of offer of possession.**



G. II Direct the respondent not to impose holding charges.

16. The complainants submitted that the respondent has offered the possession of the allotted unit on 15.10.2023 along with a statement of account. The complainants contends that the said letter contains several illegal/unreasonable demands under various/different heads, such as additional basic charges of Rs.1,72,050/-, EEC/FFC charges of Rs.55,800/-, Specification Improvement charges of Rs.37,200/-, Interest of Rs.79,552/- and the amount of Rs.3,99,587/- without any head cumulating to be Rs.7,44,189/-.
17. Upon perusal of documents available on records and submission made by both the parties, the Authority observes that as per payment plan annexed with the buyer's agreement as well as clauses mentioned in the buyer's agreement, the respondent may charge the Additional basic charges (i.e., PLC) of Rs.1,72,050/- as mentioned in the payment plan, and EEC/FFC charges of Rs.55,800/- as provided in clause 21(ii) of the buyer's agreement executed between the parties herein. There is no clause mentioned in the buyer's agreement w.r.t Specification Improvement charges of Rs.37,200/- and the amount of Rs.3,99,587/- without any head.
18. In view of the aforesaid clause, the Authority is of the view that the respondent is entitled to recover the Additional basic charges (i.e., PLC) as well as actual charges paid to the concerned department from the complainant on pro-rata basis on account of EEC/FFC, depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head. Further, the respondent shall not charge anything from the complainant which is not the part of the buyer's agreement executed inter-se parties.



19. The complainant has also contended that the respondent has charged an amount of Rs.79,552/- on account of interest on the delay payments. In this regard, the Authority is of the considered view that the rate of interest chargeable from the allottee 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.

20. **Holding Charges:** - The respondent is not entitled to charge any amount against 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.

G. III Direct the respondent to pay interest on the principal amount at prevailing rate of interest from 27.07.2019 till handover the possession of the shop.

21. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."*

22. Clause 13(ii) of the apartment buyer agreement provides for handing over of possession and is reproduced below:

Clause 13. POSSESSION AND HOLDING CHARGES

"(ii) subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total price/sale Consideration, taxes, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said



shop to the Allottee within a period of 42 months from the date of signing this agreement or approval of building plans whichever is later ("Committed Period"). The Allottees further agrees and understands that the company shall additionally be entitled to a grace period of 6 months, after expiry of the said Commitment period to allow for unforeseen delays beyond the reasonable control of the company."

23. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 42 months from the date of signing of this agreement or approval of the building plans, whichever is later and further additionally be entitled to a period of 6 months as Grace period. In the present matter, the date of building plan approved on 03.05.2013, and the buyer's agreement was executed inter se parties on 28.01.2016. Thus, the 42 is calculated from the date of execution of buyer's agreement being later i.e., 28.01.2016 comes out to 28.07.2019. Further, grace period of 6 months is allowed to the respondent being unqualified and unconditional for the force majeure. Thus, the due date of handing over possession comes out to be 28.01.2020.
24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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]

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."



25. The legislature in its wisdom in the subordinate legislation under the 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.
26. 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., **12.02.2026** is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
27. 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. 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;"*

28. 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.
29. 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 42 months with an additional grace period of 6 months from the date of execution of the agreement (28.01.2016) or date of approvals of building



plans (03.05.2013), whichever is later. Therefore, the due date of handing over possession comes out to be 28.01.2020 (including the grace period of six months) calculated from the date of execution of buyer's agreement being later. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject unit was offered to the complainant on 15.10.2023. Copies of the same have been placed on record.

30. The complainant herein has raised contention that letter of offer of possession given by the respondent is not a valid offer of possession. As offer of possession is issued with several additional demands which are not the part of the builder buyer's agreement, etc. The said offer of possession is valid as the possession has been offered after receiving occupation certificate from the competent authority. As per Section 19(10) of Act of 2016, the allottee(s) are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The Authority is of the view that if the additional demands are made by the developer, the allottee(s) may accept possession under protest or decline to take possession raising objection against unjustified demands.
31. The Authority is of the considered view that there is delay on part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.01.2016 to hand over the possession within the stipulated period.
32. Section 19(10) of the Act obligates the allottee(s) 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 10.10.2023. The respondent offered the possession of the unit in question to the complainant only on 15.10.2023, so it can be said that the complainant 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 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant 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 possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 28.01.2020 till the expiry of 2 months from the date of offer of possession (15.10.2023) which comes out to be 15.12.2023.

G. IV Direct the respondent to handover the allotted shop bearing no. B-123, to the complainant without imposing any illegal charges upon the complainants.

33. The respondent has obtained the occupation certificate from the competent authority on 10.10.2023 and offered the possession of the allotted unit vide letter dated 15.10.2023. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 30 days of this order.

G. V Direct the respondent to execute the conveyance deed of the allotted shop.

34. The complainant is seeking relief of execution of conveyance deed. As per clause 14 of the buyer's agreement provides for 'Conveyance deed and stamp duty' and is reproduced below:

"14. CONVEYANCE DEED AND STAMP DUTY

Subject to the Allottee, fulfilling all its responsibilities stipulated herein and executing any other document as required to be executed pursuant to this Agreement and making all payments under this Agreement, including but not limited to:

- (i) *All payments as set forth in **ANNEXURE III** to this Agreement, including the Sale Consideration of the said Shop;*



- (ii) Interest on delayed instalments;
 - (iii) Registration charges;
 - (iv) Stamp duty;
 - (v) Any other incidental charges or dues, required to be paid for due execution and registration of the Conveyance Deed;
 - (vi) Holding Charges and/or any other charges, dues payable by the Allottee to the MSA/Company till the date of execution of the Conveyance Deed;
 - (vii) All other dues, as set forth in this Agreement or as may become due to the Company from time to time with respect to the said Shop;
- The Company shall prepare and execute Conveyance Deed to convey the title of the said Shop in favour of the Allottee."

35. The Authority has gone through the conveyance clause of the agreement. A reference to the provisions of section 17 (1) of the Act is also must and it provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

36. The respondent is under an obligation as per Section 17 of Act to get the conveyance deed executed in favour of the complainant. Also, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As delineated hereinabove, the occupation certificate in respect of the said project/unit was granted on 10.10.2023 by the competent authority. Thus, the respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act, 2016.



H. Directions issued by the Authority:

37. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 28.01.2020 till valid offer of possession (15.10.2023) plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. 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 rate of interest chargeable from the allottee 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 complainant is directed to pay outstanding dues, after adjustment of delay possession charges within a period of 30 days. The respondent is directed to handover the physical possession of the allotted shop within 30 days to the complainant/allottee as per specification mentioned in the buyer's agreement and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- iv. The respondent is further directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act, 2016.



- 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 builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*
- vi. A period of 90 days is given to the complainant-builder to comply with the directions given in this order and failing which legal consequences would follow.
38. Complaint as well as applications, if any, stand disposed off accordingly.
39. File be consigned to the registry.

Dated: 12.02.2026



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