

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

Complaint no.: 2488 of 2025
Date of decision: 13.02.2026

Mrs. Kamlesh Thakur
Address: - F-555, Raj Nagar Part-2, Netaji Subhash
Marg, Palam Colony, New Delhi

Complainant

Versus

1.M/s Y B Builders Private Limited
2.Niami Developers Pvt. Ltd.
Registered office at: - SCO- 304, 2nd Floor, Sector 29,
Gurugram, Haryana-122002

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Vijesh Vohra (Advocate)

Complainant

Sh. Sushil Yadav (Advocate)

Respondents

ORDER

1. This 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1	Name and location of the project	"Nimai Place" at sector 114, Gurgaon, Haryana
2	Nature of the project	Commercial
3	Project area	3.012 acres
4	DTCP license no.	126 of 2012 dated 20.12.2012 valid upto 19.12.2028
5	RERA Registered/ not registered	Registered vide no. 07 of 2018 dated 13.07.2018 valid upto 31.03.2023
6	Unit no.	037, Ground floor (page 37 of reply)
7	Unit area admeasuring	468 sq. ft.
8	Date of builder buyer agreement	18.10.2018 (page 36 of reply)
9	Possession Clause	7.1 <i>The promoter assures to hand over the possession of the commercial unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place on the last quarter of 2019</i>
10	Due date of possession	31.12.2019 [as per possession clause]
11	Basic sale consideration	Rs. 26,84,293/- (page 63 of complaint)
12	Amount paid by the complainant	Rs. 26,84,293/- (page 63 of complaint)
13	Occupation certificate	10.02.2023

		(as per DTCP website)
14	Offer of possession	01.04.2023 [Page 62 of reply]
15	CD executed on	08.02.2024 [Page 60 of the complaint]

B. Facts of the complaint:

3. The complainant has made the following submissions:

- i. That the Complainant, Mrs. Kamlesh Thakur, is a senior citizen and a retired government pensioner. She is a law-abiding citizen of India and has complete faith in the justice delivery system.
- ii. That the Respondent, Y.B. Builders Pvt. Ltd., is a company engaged in the business of real estate development under the name and style of Y.B. Builders Pvt. Ltd. and is the promoter of the real estate project titled "NIMAI PLACE." That the Complainant, relying upon the representations, assurances, and promotional materials issued by the Respondent, invested her lifelong savings in the project "NIMAI PLACE" and consequently executed a Builder-Buyer Agreement (hereinafter "BBA") dated 18.10.2018 in respect of the allotted commercial unit.
- iii. That as per Para 7.1 of the BBA, the Respondent unequivocally undertook to deliver possession of the said unit by the last quarter of 2019. However, the Respondent failed to honour this contractual commitment and handed over possession only on 01.03.2024, resulting in an inordinate and unjustifiable delay of approximately 4.5 years.
- iv. That the Respondent had further covenanted to hand over possession within 30 days from the issuance of the Occupancy

Certificate (OC). Despite the OC being issued, the Respondent delayed handing over possession far beyond the stipulated period, thereby committing a clear and deliberate breach of the terms of the BBA.

- v. That the BBA, at page 4, expressly provides that one covered parking space forms an integral part of the total sale consideration of the unit. Contrary to this binding contractual clause, the Respondent has wrongfully refused to allot the Complainant her rightful covered parking space, despite the issue having been acknowledged earlier by the Respondent's CRM representative, Shri Alok Verma. That the Respondent has raised illegal and premature maintenance demands amounting to ₹53,125/- for the period 01.01.2024 to 30.06.2024, in contravention of Para 11 of the BBA, wherein the Respondent is expressly obligated to bear the cost of essential services until the Association of Allottees assumes charge of maintenance.
- vi. That the Complainant issued a legal notice dated 18.06.2024 calling upon the Respondent to withdraw its unlawful demands; however, the Respondent failed to respond. Instead, on 19.02.2025, the Respondent issued yet another arbitrary demand for ₹1,41,042/- towards alleged maintenance charges. It is already stipulated in the BBA that maintenance costs stand included in the total price of the commercial unit. The Respondent's repeated and baseless demands amount to harassment and coercive conduct.
- vii. That the Respondent has blatantly failed to fulfil its contractual obligations under the BBA, causing the Complainant severe financial loss, mental agony, and emotional distress. That the BBA

is a legally enforceable and binding document, and the Respondent is duty-bound to comply with its terms in letter and spirit.

- viii. That the Respondent's persistent non-compliance with the BBA, including the unjustified delay in possession, denial of the promised covered parking space, and issuance of illegal maintenance demands, is wilful, arbitrary, and amounts to unfair trade practice and deliberate cheating of the Complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. The respondents be directed to handover physical possession of the unit along with interest.
- II. Direct the respondent to allot one car parking space as per the BBA.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:

- i. That the present complaint filed by the Complainant is wholly misconceived, frivolous, and not maintainable either on facts or in law. The same deserves to be dismissed with exemplary costs as the Complainant has already taken possession, executed the Conveyance Deed, and settled all disputes with the Developer. Having derived full benefit of the settlement, the Complainant is now abusing the process of law by filing a repetitive complaint with ulterior motives to extract unjust enrichment.
- ii. That the Respondent Company, Y.B. Builders Pvt. Ltd., is a reputed real estate developer and had conceived and developed a commercial project known as "NIMAI PLACE", situated at Sector 114, Gurugram, Haryana, after obtaining necessary approvals and sanctions from the competent authorities.

- iii. That the project was duly licensed by the Director, Town and Country Planning (DTCP) vide License No. 33 of 2011 dated 16.04.2011 under the Haryana Development and Regulation of Urban Areas Act, 1975, for the development of the said commercial project.
- iv. That the Complainant had applied for booking of a commercial unit in the said project after conducting due diligence and subsequently entered into a Builder-Buyer Agreement (BBA) dated 18.10.2018 for Unit No. 037 in "NIMAI PLACE". That complainant Paid Rs 30,00,000/- to the respondent and the respondent given waiver in total sales consideration and also give waiver of maintenance charges till the date of conveyance deed to which complainant agreed that she will not claim any delay possession charges in future.
- v. That the Developer completed the construction and obtained Occupation Certificate (OC) on 10.02.2023, issued by the competent authority. Thereafter, an Offer of Possession was duly sent to the Complainant, and physical possession of the said unit was handed over.
- vi. That after the possession, both parties mutually discussed and settled the issue of delay compensation, which stands reflected in the statement of account of the Complainant. Pursuant to the said full and final settlement, the Complainant accepted all terms and executed the Conveyance Deed dated 02.02.2024, thereby extinguishing all prior claims.
- vii. That Clause 2 of the Conveyance Deed clearly records that the Complainant (Vendee) has:

- o Taken actual, physical and vacant possession of the said unit;
 - o Fully inspected and verified the construction, measurement, specifications, materials, and fittings;
 - o Expressly confirmed no grievance or claim remains pending with respect to the project; and
 - o Waived all rights to raise any objections or claims in future, including any claim relating to delay in possession.
- viii. Thus, by executing the Conveyance Deed, the Complainant has voluntarily and contractually waived all rights to claim any further compensation or damages. Once the sale is concluded and the Conveyance Deed is registered, the relationship of Developer and Allottee ceases and transforms into that of Vendor and Vendee, governed by the Conveyance Deed, not the BBA.
- ix. The present complaint has been filed under CRA-II format, which is applicable only for refund cases where the Allottee does not wish to continue with the project. Since the Complainant has already taken possession and executed the Conveyance Deed, this format is wholly inapplicable, rendering the complaint not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act").
- x. Once the Conveyance Deed is executed and the property stands transferred, the transaction attains finality under Section 54 of the Transfer of Property Act, 1882, and no cause of action survives for re-agitation of delay compensation.
- xi. The allegation regarding maintenance charges is baseless. Under Rule 24(4) of the Haryana Real Estate (Regulation and Development) Rules, 2017, and as per the BBA, the Developer is

- entitled to charge maintenance charges from the date of issuance of Occupation Certificate, irrespective of actual possession date.
- xii. Since OC was issued on 10.02.2023, the Developer is fully within its rights to demand maintenance charges thereafter. The Complainant's objection to the same is contrary to settled contractual and statutory provisions.
- xiii. It is evident that the Complainant, after availing benefits, waiver, and discounts from the Developer, and after executing the Conveyance Deed, is now attempting to reopen settled matters to extort money and harass the Developer. The Authority has the power under Section 35 and 38 of the RERA Act to discourage frivolous and vexatious litigation and impose exemplary costs to prevent abuse of process.
6. 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 submissions made by both the parties.

E. Jurisdiction of the Authority:

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction

8. 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

9. 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;

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.

10. 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 relief sought by the complainant.

F.I The respondents be directed to handover physical possession of the unit along with interest.

F.II Direct the respondent to allot one car parking space as per the BBA.

11. 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."

12. Clause 7.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

7.1. Possession

*The promoter assures to hand over the possession of the commercial unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place on **the last quarter of 2019.***

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(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.

14. 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.
15. 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., 13.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

16. 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—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

17. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondents /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
18. Upon consideration of the documents available on record and the submissions made by both the parties, this Authority is satisfied that the respondents are in contravention of Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 by failing to hand over possession of the subject unit within the stipulated period as agreed between the parties. By virtue of Clause 7.1 of the Apartment Buyer's Agreement dated 18.10.2018 executed between the parties, the possession of the subject apartment was to be delivered on or before 31.12.2019. However, the respondents failed to hand over possession

by the said committed date, thereby violating the terms of the Agreement as well as the statutory obligation cast upon it under the Act. That the respondents obtained the Occupancy Certificate from the competent authority on 10.02.2023 and thereafter offered possession of the said unit to the Complainant vide Offer of Possession Letter dated 01.04.2023. The conveyance deed has already been executed between the parties on 08.02.2024.

19. 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 respondents are established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @10.80% p.a. w.e.f. 31.12.2019 till the date of offer of possession plus two months i.e., 01.06.2023. 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.

F.II Direct the respondent to allot one car parking space as per the BBA.

20. As per Schedule-C (Payment Plan) of the Builder Buyer Agreement dated 18.10.2018, the Respondent is directed to allot one car parking space to the Complainant, strictly in accordance with the terms and conditions stipulated in the BBA.

G. Directions of the Authority

21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents are 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., 31.12.2019 till the date of offer of possession plus two months i.e., 01.06.2023 as per Proviso to section 18(1) of the Act read with Rules 15 of the Rules, ibid.
- ii. The arrears of such interest accrued from 31.12.2019 till the date of order by the authority shall be paid by the respondents/promoter to the complainants within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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 respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondents/promoter shall not charge anything from the complainants which is not the part of the buyer's agreement.
22. The complaint and application, if any, stands disposed of.
23. File be consigned to registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.02.2026