

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

Complaint no. : 2251 of 2025
Date of filing complaint: 08.05.2025
Date Of Decision: 13.02.2026

Lalit Mohan Bhatt
Reema Bhatt

Both R/o: - MIG Flat no. 231, Suryodaya Apartment,
Sector-12, Pocket-8, Dwarka, Delhi - 110075

Complainants



Versus

M/s Almond Infrabuild Pvt. Ltd.

Regd. Office at: 711/92, Deepali, Nehru Place, New
Delhi-110019

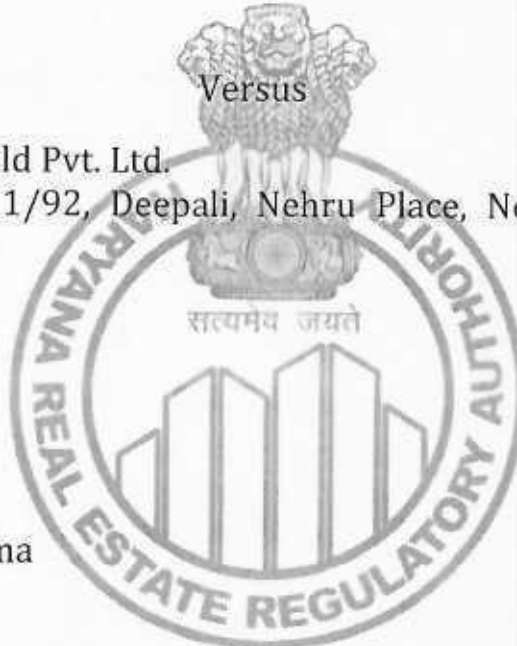
Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Shashi Kant Sharma
Ms. Shivani Dang

Complainants
Respondent



ORDER

1. The present complaint has been filed by the complainants/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S no.	Heads	Information
1.	Project name and location	"Tourmaline", Sector-109, Gurugram
2.	Project area	10.41875 acres
3.	Nature of the project	Group Housing Project
4.	DTCP license no. and validity status	250 of 2007 dated 02.11.2007 valid up to 01.11.2019
5.	Name of licensee	Raj Kiran and ors. C/o Chintels India Ltd.
6.	RERA registration details	41 of 2017 dated 10.08.2017 valid up to 6 years from EC
7.	Apartment no.	5232, 23 rd floor, Tower-5 [page no. 23 of complaint]
8.	Unit measuring	1347 sq. ft. [page no. 23 of complaint]
9.	Date of agreement for sale	01.05.2019 [page no. 21 of complaint]
10.	Possession clause	<p>7. Possession of the Apartment for Residential Usage</p> <p><i>7.1 The Promoter assures to handover possession of the Apartment for Residential usage along with Car Parking(if applicable), on or before 30 September 2019 Plus 3 months of grace period unless there is delay due to "force majeure", court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project.</i></p>

		[emphasis supplied] (Page no. 29 of complaint)
11.	Due date of possession	30.09.2019 (calculated as per possession clause)
12.	Total consideration	₹ 1,36,18,100/- [as per payment plan on page no. 47 of complaint]
13.	Total amount paid by the complainants	₹ 1,48,37,824/- [as per SOA at page 51 of complaint]
14.	Occupation certificate	09.08.2019 Tower-1 Pocket-A, Tower-2 Pocket-A, Tower-3 Pocket A, Tower-4 Pocket-A, Tower-5 Pocket-A, EWS Block, Community Building, Convenient Shopping in Community Building, Lower and Upper Basement [page no. 35 of reply]
15.	Offer of possession	09.08.2019 [page no. 58 of complaint]
16.	Various Mails sent by complainant seeking possession of the unit	2020 to 2025

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That complainants booked an apartment bearing no. 5232 with one car parking's measuring super area of 2150 sq. ft. on 23rd floor, Tower 5, for sale consideration of Rs.1,36,18,100/-. The said unit was booked on 22.04.2019 and the buyer's agreement was also executed between complainants and respondent on 01.05.2019.

- II. That as per terms and conditions clause no. 7.1 of the buyer's agreement, the respondent was supposed to handover the flat on or before 30.09.2019.
- III. That after execution of buyer's agreement the complainants have made a total sum of Rs. 1,48,37,824/- till 04.11.2019.
- IV. That after completion period the possession of the apartment was supposed to be delivered to complainants, but despite completion of the time it is observed that respondent miserably failed to give the possession of the unit till date. As on date the unit is also not in a condition to take possession. The complainants visited the unit on 26.04.2025 and astonished to shock that it is in very worst position.
- V. That the complainants paid the amount from time to time as and when such demands were raised by respondent. That on 09.08.2019 the respondent very kindly issued a letter of offer of possession wherein the respondent demanded a sum of Rs. 53,02,275/- and instructed to clear the outstanding within a period of 21 days i.e., till 30.08.2019. In the said offer of possession, the respondent stated that on receipt of the entire payment the respondent will hand over the possession of the apartment with full furnished within a period of 90 days.
- VI. That on 04.11.2019 the complainants cleared all the dues as demanded by the respondent and on the same day complainants requested to furnish and ready the flat as soon as possible. That according to offer of possession letter 09.08.2019 respondent was supposed to handover the full furnished apartment till 03.02.2020 but till date no physical possession intimation given by the respondent even the apartment is still not in condition to take possession.
- VII. That from 2019 the complainants visits the office of respondent regarding the completion of furnishing work and handing over the unit but on each

and every visit the respondent continuously gave the answer that the finishing work is going on and the possession of the unit would be delivered very shortly.

VIII. That from 2019 the complainants sent various reminders by mail in addition to telephonic calls, messages to complete the finishing work and handing over the possession of the unit as well as refund of lift charges but the respondent has not confirmed any confirm date for physical possession of the apartment. The complainants had faced financial hardships leading to mental and financial distress. However there had been no update till date on the confirm date of physical possession of the unit.

IX. That complainants had paid the hard-earned money to respondent, on the promise and inducement. That the respondent has cheated complainants with malafide intentions from the very beginning as respondent took the money from the pockets of complainants by way of misrepresentation, inducement and commitment which were totally false and fake from the very beginning.

X. That at the time of booking of the unit the sale cost indicated was Rs. 1,36,18,100/- and complainants total paid a sum of Rs. 1,48,37,824/- to the respondent and after completion of all the payments the respondent failed to handover the peaceful possession of the flat to the complainants till date.

C. Relief sought by the complainants:

4. The complainants in the present complaint are seeking the following relief(s).

- i. **Direct the respondent to pay interest @10.75% p.a. on the amount already paid by the complainants i.e., Rs. 1,48,37,824/- from 30.09.2019 till actual handover of the physical possession.**

- ii. **Direct the respondent that after making payment of delayed interest the possession should be handed over to the complainants within the stipulated time period.**
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on following grounds:
 - I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
 - II. That there is no cause of action to file the present complaint.
 - III. That the complainants have no locus standi to file the present complaint.
 - IV. That the complainants are estopped from filing the present complaint by his acts, omissions, admissions, acquiescence's and laches.
 - V. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 34 of the buyer's agreement.
 - VI. That the complainants have not approached this Hon'ble Forum with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
 - VII. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers.
 - VIII. That the complainants, after checking the veracity of the project namely, 'ATS Tourmaline', sector 109, Gurugram had applied for allotment of an apartment vide booking application form dated 06.04.2019. the

complainants had agreed to be bound by the terms and conditions of the said booking application form.

- IX. That based on the said application, respondent allotted to the complainants apartment no. 5232 on the 23rd floor of tower no. 5 having super built up area of 2150 sq. ft. for a sale consideration of Rs. 1,36,18,100. This consideration was exclusive of the GST, Cess, EDC/IDC, registration charges, stamp duty, service tax and or any other taxes/ fees/ charges/ levies etc. The complainants signed and executed the agreement for sale on 01.05.2019 and the complainants agreed to be bound by the terms and conditions contained therein.
- X. That the respondent raised payment demands from the complainants in accordance with the mutually agreed terms and conditions of the allotment as well as of the payment plan. The complainants were bound to pay the sale consideration amount of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable along with it at the applicable stage.
- XI. That the respondent being a customer-oriented company completed the construction of the unit and applied for the occupation certificate on 19.03.2018 and the same was granted by the concerned authorities on 09.08.2019. The respondent has already offered the possession of the unit to the complainants vide notice of possession dated 09.08.2019 and the respondent had demanded the installment for the net payable amount of Rs. 53,02,275/- due on offer of possession which was to be paid on or before 30.08.2019..
- XII. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. As per clause 7.1 of the buyer's agreement the construction was to be handed over on or before 30 September 2019 plus

3 months grace period. The possession of the unit was to be handed over to the complainants only after the receipt of the occupation certificate from the concerned authorities. The respondent has already completed the construction of the tower in which the unit allotted to the complainants are located.

- XIII. That the respondent has already obtained the occupation certificate and offered the possession of the unit in question to the complainants. There has been no delay whatsoever on the part of the respondent. The respondent has strictly abided by the terms and conditions of the duly executed apartment buyer's agreement. On the other hand, even though the complainants had been called upon to take the possession of his unit after fulfillment of the requisite formalities yet the complainants have not come forward to do so. The complainants have stated that they would not take over the physical possession of the unit in question till the time the respondent pays delay possession charges to the complainants.
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 on the basis of these undisputed documents and submissions made by the complainants.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. 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.

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 respondent:

F.I Objection regarding complainants are in breach of agreement for non-invocation of arbitration

12. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"34. Dispute Resolution

"All or any disputes that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions

hereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be first settled through mutual discussion an amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by Parties or if unable to be mutually appointed, then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties."

13. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

14. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

15. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided

to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

16. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration mandatorily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

G. Findings on the relief sought by the complainants.

- i. **Direct the respondent to pay interest @10.75% p.a. on the amount already paid by the complainants i.e., Rs. 1,48,37,824/- from 30.09.2019 till actual handover of the physical possession.**
- ii. **Direct the respondent that after making payment of delayed interest the possession should be handed over to the complainants within the stipulated time period.**

17. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

18. As per clause 7 of the buyer agreement provides for handing over of possession and is reproduced below:

Clause 7. Possession of the Apartment for Residential Usage
7.1 The Promoter assures to handover possession of the Apartment for Residential usage along with Car Parking(if applicable), on or before 30 September 2019 Plus 3 months of grace period unless there is delay due to "force majeure", court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project."

19. **Due date of handing over of possession:** As per possession clause 7.1 of the agreement dated 01.05.2019 the possession of the unit was to be handed over on or before 30 September 2019. Further there shall be a grace period of 3 months for delay due to force majeure which is not allowed in the present case. Therefore, the due date of possession comes out to be 30.09.2019.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges in terms of proviso to section 18 of the Act which 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.

21. 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.

22. 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% per annum.
23. 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;"*

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
25. On consideration of the documents available on record and submissions made by the parties, 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 dated 01.05.2019 executed between the parties. It is a matter of fact that agreement containing terms and conditions regarding the said unit was executed between the parties on 01.05.2019. As per the clause 7 of the agreement,

the possession of the booked unit was to be handed over on or before 30.09.2019. The respondent has obtained the occupation certificate of the project by the competent authority on 09.08.2019 and subsequently offered the possession of the unit on 09.08.2019.

26. However, the complainants in the present complaint is seeking possession of the unit and delay possession charges till actual handing over of possession and has stated that although the respondent has offered the possession of the unit but the unit is not in a habitable condition as finishing works are pending in the unit till date. The complainants in this regard has sent various mails seeking possession of the unit from year 2020 to 2025 annexed at page no. 60 to 85 of the complaint. The respondent in its reply vide email has accepted that there is delay in handing over of possession due to pending fit out works.
27. The Authority observes that the possession of the booked unit was to be handed over on or before 30.09.2019. The respondent has obtained the occupation certificate of the project by the competent authority on 09.08.2019 and subsequently offered the possession of the unit on 09.08.2019. However, the allottee's unit remains incomplete due to pending finishing works as acknowledged by the respondent.
28. The complainants have paid an amount of ₹ 1,48,37,824/- out of sale consideration of ₹ 1,36,18,100/-. The Authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations within the stipulated period.
29. Accordingly, 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 complainants are entitled to delay possession charges at the prescribed rate of interest i.e., 10.80% p.a. for

every month of delay on the amount paid by complainants to the respondent from the due date of possession i.e., 30.09.2019 till the actual handing over of possession of the allotted unit as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

30. The complainants in the present complaint are seeking relief for the possession of the unit. The occupation for the said unit was received on 09.08.2019 thereafter possession was offered on the same day i.e., 09.08.2019. Therefore, the respondent is directed to handover the possession of the unit within 60 days of this order.

H. Directions of the authority

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.80% per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e., 30.09.2019 till actual handing over of possession of the allotted unit as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to handover the possession of the unit within 60 days of this order.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.

v. The respondent shall not charge anything from the complainants, which is not the part of the buyer's agreement.

32. Complaint as well as applications, if any, stands disposed off accordingly.

33. File be consigned to registry.

Dated: 13.02.2026



(Arun Kumar)

Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM