

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

Complaint no. : 4701 of 2024
Date of filing : 27.09.2024
Date of decision : 06.01.2026

Mrs. Shubre Prakash
Mr. Anupam Prakash

Regd. Address: A-15/10, DLF Phase-1,
Gurugram, Haryana -122002

Complainants

Versus

M/s IREO Private Limited

Regd. office: IREO Campus, Archview Drive, Ireo
City, Golf Course Extension Road, Gurugram-
122101

Respondent

CORAM:

Shri Arun Kumar
Shri P S Saini

**Chairman
Member**

APPEARANCE:

Sh. Karan Singh (Advocate)
Ms. Shivani Dang (Advocate)

**Counsel for Complainant
Counsel for Respondent**

ORDER

1. The present complaint has been filed by the complainants/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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 of the project	"Ireo City", Sector-59, Gurugram Managed Serviced Apartments-Rental Pool
2.	Project area	3.9375 acres
3.	Nature of the project	Residential
4.	RERA Registered or not	Not Registered
5.	DTCP License	56 of 2010 dated 31.07.2010 valid upto 30.07.2027 (as mentioned in Building plan Approval dated 05.09.2013 as per page 57 of reply)
6.	Environment clearance	12.12.2013 (page no 63 of reply)
7.	Building plan approval	05.09.2013 (as per page no. 57 of reply)
8.	Application form	27.01.2012
9.	Allotment letter	26.09.2012 (As per page no. 47 of reply)
10.	Date of buyer's agreement	21.06.2013 (page no. 24 of complaint)

11.	Unit no.	R-1203, 12 th floor, Tower-R (page no. 32 of complaint)
12.	Unit area admeasuring	908.33 sq. ft. (Super Area) (page no. 32 of complaint)
13.	Possession clause	<i>13.3 - The company proposes to offer the possession of the said rental pool serviced Apartment to the allottee within a period of 42 months from the date of approval of building plan and/or fulfilment of the preconditions imposed there under (commitment period). The allottee further agrees and understands that the company shall additionally entitled to a period of 180 days (Grace period)</i> (As per page no. 48 of complaint)
14.	Due date of possession	05.09.2017 (grace period) Calculated from date of Building plan approval dated 05.09.2013]
15.	Total consideration sale	Rs.1,32,97,023/- (as per page no. 70 of complaint)
16.	Basic consideration sale	Rs.1,23,79,582/- (As per page no. 39 of complaint)
17.	Amount paid by the complainant	Rs.92,37,958/- (As per SOA dated 02.07.2019 at page no. 118 of the complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- a. That the respondent is a real estate business conglomerate by the name "Ireo Private Limited" and is the developer of the project called Ireo City Central "Managed Serviced Apartments-Rental Pool". That sometime in early 2012, the respondents thought their agents and employees approached the complainants and represent them about the project stated to be a unique project which shall be delivered on time and the respondent is a huge company backed by foreign investment i.e. Ascot, Singapore.
- b. The associates/officials of the respondent further in order to induce the complainants at their residence and made specific assurances of the project being a very high-end project which shall be executed in a time bound manner as the project is done in collaboration with the World's leading provider of service. It was further assured to the complainants that all the approvals are already in place and work is already in full swing.
- c. That based on the various representations and assurances of the respondents, the complainants were induces to make a booking and parted with a sum of Rs.12,50,000/- and Rs.12,86,356/- to the respondent vide cheque bearing no. 927491 and 363460 respectively. The acknowledgment slips dated 30.11.2012 were issued to the complainants against this amount. The complainants were further assured that their money will be totally safe and secure. The complainants were allotted furnished service apartment no. R-1203, type Studio, on 12th floor, R tower having super area of 908.33 sq. ft..
- d. That after much follow-up by the complainants, the respondent finally gave the allotment to the complainant and signed the

buyer's agreement dated 21.06.2013, after whole 9 months. The buyer's agreement was signed with the assurance that the possession of the apartment will be given within 42 months of signing of the buyer's agreement and that all the requisite permission are already being taken by the respondent.

- e. Thereafter from time to time, the respondent raised various demands upon the complainants to make the requisite payments which were duly fulfilled. The complainant, in total paid a sum of Rs.92,37,954/-. The respondent had to handover the possession of the apartment latest by 21.06.2017 as per promises made by them vide the buyer's agreement, but the respondent, miserably failed to do so, even till date.
- f. That the respondent prior to the signing of the BBA, made the complainant believe that they have enormous expertise and experience to deliver the project on time and will not cheat the complainants. However, all the promises made the respondent were never fulfilled and due to this the complainant is left helpless and the project is far from complete.
- g. That in the meantime the complainants has learned about various (material) discrepancies, mis-representations and abnormalities in the statement/ claims and approvals received by the respondent from various authorities *inter-alia*:
 - i. The building plan has been surreptitiously modified/ changed by the respondent on 29.02.2016 without the complainant's approval/consent thereby misleading and cheating them.

- ii. The project was sold to the complainants and money(s) accepted by the respondent(s) of Rs.12,50,000/- and Rs.12,86,356/- to the respondents vide cheque bearing no. 927491 and 363460 respectively at a time when the building plan was not yet approved.
- iii. The project was sold to the complainants and money(s) accepted by the respondent(s) of Rs.12,50,000/- and Rs.12,86,356/- to the respondents vide cheque bearing no. 927491 and 363460 respectively at a time when the building plan was not yet approved.
- iv. The buyer's agreement was signed on false averment that the building plan is already passed out in 2018 the complainants come to know that the building plan got approved on 05.09.2013 after 3 months of signing of BBA.
- h. That the complainants have been under tremendous mental stress and agony due to the conduct of the respondent, none of the commitments of the respondent has come true. The complainant is now left with no option but to file the complaint for which, he has sought for legal advice and has approached this Authority, seeking justice and relief *inter-alia* in terms of a possession along with prescribed interest as this Authority may deem fit in the present case and its circumstances and also for seeking justice, which the complainants so urgently and ardently deserves.
- i. The cause of action on favour of complainant arose when the respondent failed to deliver possession of the apartment and possession has not been delivered despite a delay of over 5 years over the committed date of completion i.e. 21.06.2017.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent to provide the possession of the unit to the complainants in a time bound manner complete in all respects including common amenities and all facilities.
 - b. Direct the respondent to pay the prescribed interest for the period calculated from the time the complainants have paid the money to the respondent till the offer of possession of the booked unit.
 - c. Direct the respondent to not charge any amount over and above the agreed amount as per BBA.
 - d. Direct the respondent to pay Rs.2,50,000/- as damage for mental agony and stress.
 - e. Award cost of litigation in favour of the complainants.
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) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. That the reply on behalf of respondent was filed on 06.03.2025 and same was amended by respondent & submitted during course of proceedings dated 06.01.2026 and taken on record. The respondent has contested the complaint on the following grounds:-
 - a. That the present complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The Buyer's Agreement was executed between complainants and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act,

2016 and the provisions laid down in the said Act cannot be applied retrospectively.

- b. That there is no cause of action to file the present complaint and complainants have no locus standi to file the present complaint. The complainants are estopped from filing the present complaint by their own acts, omissions, admissions, acquiescence and laches.
- c. The Authority has no jurisdiction to adjudicate upon the present baseless and false complaint.
- d. 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.
- e. That the complainants have not approached this Authority with clean hands and have intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by them maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law.
- f. That the complainants after checking the veracity of the project namely "Managed Service Apartment-Rental Pool" at 'Ireo City Central', Sector 59, Gurugram had applied for an allotment of a serviced apartment vide Booking Application Form dated 27.01.2012.
- g. That based on the said Application, the respondent vide its Allotment Offer Letter dated 26.09.2012 allotted to the complainants Managed Service Apartment bearing no. R-1203 having tentative super area of 908.33 sq. ft. for a sale consideration of Rs. 1,32,99,239/-. The said consideration was exclusive of the registration charges, stamp duty,

- service tax and other charges which are payable by the complainants. Thereafter, the Buyer's Agreement was executed between the complainants and the respondent on 21.06.2013.
- h. That the respondent had raised payment demands from the complainants in accordance with agreed terms and conditions of the allotment as well as payment plan. That vide payment demand dated 05.03.2014, the respondent had sent the third installment demand for the net payable amount of Rs. 12,78,992/-. However, the complainants made only part payment of the demanded amount and the remaining amount payable by the complainants was demanded by the respondent being Arrears in the next installment.
- i. That vide payment demand dated 28.12.2015, the respondent had sent sixth installment demand for the net payable amount of Rs. 12,84,759.56. However, the complainants remitted the due amount only after a reminder dated 25.01.2016 was sent by the respondent to complainants.
- j. That vide payment demand dated 24.08.2016, the respondent had sent the seventh installment demand for net payable amount of Rs. 12,86,603.37. However, the said amount was remitted by the complainants only after reminders dated 19.09.2016 and 13.10.2016 were sent by the respondent to the complainants.
- k. 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. That clause 13.3 of the Buyer's Agreement and Clause 38 of the Schedule-I of the Booking Application Form states that the '...subject to force majeure conditions and 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 apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfillment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally being entitled to a period of 180 days (Grace Period)' From the aforesaid terms of the Buyer's Agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction can't be raised in the absence of the necessary approvals. That it has been specified in Sub- clause (xv) of Clause 16 of the Building Plan dated 05.09.2013 of the said project that the Clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The Environment clearance for construction of the said project was granted on 12.12.2013. Furthermore, in Clause 1 of Part-A of the Environment Clearance dated 12.12.2013 it was stated that 'Consent to Establish' was to be obtained before the start of any construction work at site. The Consent to Establish was granted on 07.02.2014 by the concerned authorities. Therefore, the pre-condition of obtaining all the requisite approvals were fulfilled only on 07.02.2014.

- i. That it has been held by the Hon'ble Apex Court in **Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna & Ors. (Civil Appeal No. 5785/2019)** that the due date for the delivery of possession is to be computed from the date on which all prerequisite conditions mandated by the government for the commencement of construction and execution of development works at the site are fulfilled, and not from the date of

approval of the building plan. Accordingly, in the present case, the date on which all requisite approvals were obtained is 07.02.2014, when the 'Consent to Establish' was obtained.

- m. That in terms of the Buyer's Agreement the proposed time for handing over of possession has to be computed from 07.02.2014. Moreover, as per Clause 13.5 of the Buyer's Agreement, 'Extended Delay Period' of 12 months from the end of Grace Period is also required to be granted to the respondent. The due date to handover the possession was to elapse on 07.02.2019. However, it is submitted that the said due period was subject to the occurrence of the force majeure conditions and complainants complying with the terms of the allotment. It is submitted that complainants had admitted and acknowledged vide Clause 13.6 of the Buyer's Agreement that in case the completion of the apartment was delayed due to the force majeure then the commitment period and/or the grace period and/or the Extended Delay period would stand extended automatically to the extent of the delay caused under the Force majeure conditions and that complainants would not be entitled to any compensation whatsoever.
- n. That the construction of the tower in which the apartment is allotted to the complainants was located is almost complete.
- o. That calculating the period of delay, the judgment of this Hon'ble Court in *Abhishek Khanna (supra)* is instructive which interprets the expression '42 months from the date of approval of the Building Plans and/or fulfilment of the preconditions imposed thereunder'. It is respectfully submitted that the Hon'ble Supreme Court in ***Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna & Ors. (Civil Appeal No. 5785 of 2019)*** has categorically held that the timeline for handing

over possession is to be reckoned from the date of approval of the fire-fighting scheme and not from the date of sanction of building plans etc.

- p. That in present case, the Building Plans for the Project were duly approved by the Department of Town and Country Planning (DTCP) on 05.09.2013. The said approval was conditional and subject to compliance with further statutory approvals, including prior Environmental Clearance from the Ministry of Environment and Forests, Government of India, before commencement of construction. The Environmental Clearance was granted only on 12.12.2013.
- q. That Clause 1 of Part-A of the Environmental Clearance categorically mandates that the Project Proponent shall obtain the Consent to Establish prior to commencement of any construction activity. Admittedly, the said Consent to Establish was issued only on **07.02.2014**. Consequently, excavation and construction could lawfully commence only thereafter, i.e., in **March 2014** and Company/Respondent demanded Payment of exaction only after the said.
- r. That without prejudice to the above, the Respondent applied for Fire Scheme approval on **08.01.2014**, which application was well within the effective and reasonable statutory window, keeping in view the intervening environmental compliances that were a condition precedent for further statutory processing. The interregnum between the Building Plan approval dated 05.09.2013 and the Fire Scheme application dated 08.01.2014 was occasioned solely due to the Respondent's bona fide efforts to align all submissions with the conditions imposed under the Environmental Clearance, including

- prerequisites relating to construction sequencing, safety norms, and site readiness.
- s. That the statutory timelines cannot be interpreted in isolation or with mechanical rigidity when parallel mandatory approvals under environmental law are pending. Meaningful construction without fire approval cannot commence other than the structure of the building.
- t. That vide letter dated 14.05.2014, objections were raised by the Fire Department. It is trite law that objections raised by statutory authorities must be mandatorily complied with, and the time taken to remove such objections is beyond the control of the promoter. In order to ensure enhanced safety including fire safety, the Respondent applied for **revised Building Plan approval on 04.12.2014**. This action was strictly in consonance with **Clause 10.1 of the Buyer Agreement**, which expressly permits revisions or modifications necessitated by statutory authorities.
- u. That the Building Plans received in-principle approval on 01.12.2015, following which public objections were invited on 09.12.2015 as per the prevailing policy. No objections were received from the customer. Thereafter, the STP office issued its NOC on 29.01.2016, and the final approval of the revised Building Plans was granted on 29.02.2016.
- v. That upon finalisation of the revised statutory approvals, the Respondent re-applied for Fire Scheme approval on 12.04.2016. Thereafter, further objections were raised by the Fire Department on 28.05.2016, to which the Respondent duly submitted a detailed rectification along with its reply on 10.08.2016. Subsequent to due scrutiny and verification of the compliances by the competent authority, Fire Scheme approval was granted on 18.01.2017.

Accordingly Notice of Possession date in the present matter comes to be 18.01.2022 as been held in Abhishek Khanna (**Supra**).

- w. That part Occupation Certificate dated 20.11.2018 was obtained covering Building Block A – Upper Ground Floor; and Building Block B – Ground Floor along with four basements and subsequently, another Part Occupation Certificate dated 28.08.2019 was granted for lower ground floor and first floor of building Block A; and first floor of building Block B.
- x. It is well settled under RERA jurisprudence that an allottee who has voluntarily agreed to specific contractual terms governing compensation, and has derived or sought to derive benefits under the same agreement, cannot be permitted to resile from such terms or approbate and reprobate by invoking broader statutory remedies intended for a different class of allottees. The Complainant's conduct clearly amounts to acquiescence in the agreed contractual regime and creates a binding estoppel against asserting claims inconsistent with the Agreement.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
- E. Jurisdiction of the Authority**
8. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.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.

F.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 relief sought by the complainants.

F.I. Direct the respondent to provide the possession of the unit to the complainants in a time bound manner complete in all respect including common amenities and all facilities.

F.II. Direct the respondent to pay the prescribed interest for the period calculated from the time, the complainants have paid the money to the respondent till the offer of possession of the booked unit.

F.III. Direct the respondent to not charge any amount over and above the agreed amount as per BBA.

12. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

13. In the present matter the complainant was allotted unit no. R -1203, admeasuring 908.33 sq. ft. (super area) in the project "Ireo City" Sector 59 by the respondent-builder for a total sale consideration of 1,32,97,023/- & basic sale consideration of Rs.1,23,79,582/- and they have paid a sum of Rs.92,37,958/-. An allotment letter was executed by the respondent in favour of allottee on 26.09.2012 and Builder developer agreement was executed on 21.06.2013. As per clause 13.3 of the BBA, respondent was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from the date of approval of building plan and/or fulfilment of the preconditions imposed there under. The date of **Building plan**

approval is 05.09.2013. Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 05.09.2017. The Occupation Certificate for the project has not yet been obtained from the competent Authority.

14. The complainant intends to continue with the project and are seeking delay possession charges interest on the amount paid. 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:

"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. -

in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

15. Clause 13.3 of the BBA provides for handing over of possession and is reproduced below:

"The company proposes to offer the possession of the said Rental Pool Serviced Apartment to the allottee within a period of 42 months from the date of approval of building plan and/or fulfilment of the preconditions imposed there under (commitment period). The allottee further agrees and understand that the company shall additionally be entitled to a period of 180 days (Grace period), after the expiry of the said commitment period to allow unforeseen delays beyond the reasonable control of the Company."

16. The respondent promoter has proposed to handover the possession of the subject unit within a period of 42 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.
17. On a bare reading of the clause 13 of the agreement, it becomes apparently clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is so vague and ambiguous in itself. Nowhere in the agreement it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the

established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the Authority is of the view that the date of sanction of building plans i.e., 05.09.2013 ought to be taken as the date for determining the due date of possession of the unit in question to the complainant. Therefore, the due date of possession comes out to be 05.09.2017

18. Due date of possession and admissibility of grace period: As per clause 13.3 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 42 months from the date of approval of building plan and/or fulfilment of the preconditions imposed there under (commitment period). Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 05.09.2017.

19. Payment of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges at the 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]

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.

20. 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.
21. 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., 06.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. **10.80%**.
22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

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

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

23. 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.
24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 13.3 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 05.09.2017. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
25. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the allotment letter

and BBA. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., **05.09.2017** till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.IV Direct the respondent to pay Rs.2,50,000/- as damage for mental agony and stress.

F.V. Award cost of litigation in favour of the complainant.

27. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.
28. That complainant is seeking above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the Adjudicating Officer having due

regard to the factors mentioned in section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

F.VI. Execute conveyance deed.

29. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas 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. However, there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent Authority.

G. Directions of the Authority

30. 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):

- a. The respondent is directed to pay interest at the prescribed rate of 10.80% p.a. for every month of delay from due date of possession i.e., 05.09.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the

competent authority or actual handing over of possession, whichever is earlier, as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- b. The respondents are directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining Occupation Certificate from the competent Authority.
- c. The respondents are directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent Authority.
- d. The rate of interest chargeable from the allottees by the promoter, in case of default, if any, shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- f. The respondents shall not charge anything which is not the part of BBA.

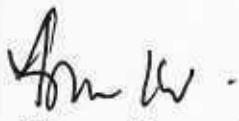
g. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.

31. Complaint stands disposed of.

32. File be consigned to registry.



(P. S. Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.01.2026



HARERA
GURUGRAM