BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**3463 of 2024**
Date of filing the complaint:	**22.07.2024**
Date of decision:	**07.04.2026**

Birender Singh R/o: Chamber No. 143, Shaheed Bhagat Singh Block, District Court, Gurugram	**Complainant**
Versus	
M/s Pivotal Infrastructure Private Limited **Registered office at:** 309, 3rd floor, Jmd Pacific Square, Sector 15, Part- II, Gurugram	**Respondent**

CORAM:	
Arun Kumar	**Chairman**
APPEARANCE:	
Devinder Singh (Advocate)	Complainant
Kirandeep Kaur (Advocate)	Respondent

ORDER

1. The present 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 provisions 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	"99 Marina Bay" in project "Ridhi Sidhi" at Sector-99, Gurugram, Haryana
2.	Nature of the project	Commercial Space in Affordable Group Housing
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 Valid up to 08.08.2019
5.	RERA Registered/ not registered	Registered 236 of 2017 dated 19.09.2017 valid up to 08.08.2019
6.	Registration extension vide no.	HARERA/GGM/REP/RC/236/2017/ EXT/177/2019 dated 30.12.2019 valid up to 31.08.2020
7.	Unit no.	Commercial Shop no.21 (As per clause 2 of BBA page no. 14 of the complaint)
8.	Unit area admeasuring	248.80 sq. ft. (Super area) [Old] (As per clause 2 of BBA page no. 14 of the complaint) 250.04 sq. ft. (Super area) [New] (as mentioned in demand letter dated 22.09.2023 at page 66 of reply)
9.	Date of agreement for sale	30.12.2016 (As per page no. 14 of the complaint)

10.	Date of building plan approval	17.10.2014 (As per page no.59 of the reply)
11.	Environmental clearance dated	22.01.2016 (As per page no. 46 of the reply)
12.	Possession clause as per Policy (AHP 2013)	1(iv)All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environment clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.
13.	Due date of possession	22.01.2020 [Note: Due date of possession to be calculated 48 months from the date of environmental clearance i.e., 22.01.2016, being later]
14.	Payment Plan:	

Super Flexi Payment Benefit Plan ("The Plan")

Sr. no.	Particular	Date	Amount	Benefit per month (in Rs.)
1	At the time of booking	29.10.2016	Rs.1,00,000/-	Nil
2	Amount payable within 30 days of payment of booking amount	29.11.2016	Rs.6,66,800/-	Rs.6,116/-
3	Total price payable 6 months commencing from the date of payment of booking amount	29.04.2017	Rs.3,66,980/-	Rs.9,174/-
4	Total price payable 12 months commencing from the date of payment of booking amount	29.10.2017	Rs.3,66,980/-	Rs.12,233/-
5	Total price payable 18 months commencing from the date of payment of booking amount	29.04.2018	Rs.3,66,980/-	Rs.15,290/-
6	Total price payable 24 months commencing from the date of payment of booking amount	29.10.2018	Rs.3,66,980/-	Rs.18,349/-
7	Total price payable 30 months commencing from the date of payment of booking amount	29.04.2019	Rs.3,66,980/-	Rs.21,407/-

8	Total price payable 36 months commencing from the date of payment of booking amount	29.10.2019	Rs.3,66,980/-	Rs.24,465/-

**The benefit shall be applicable only in case of payment of subsequent installments.*

(As per BBA page no. 16-17 of the complaint)

15.	Super flexi payment benefits are payable till	B. Super flexi payment benefit amount shall be payable for the period commencing on the completion of 25% by the 2nd party after the payment of the booking amount and till the date the letter of offering possession of the unit (the possession letter) is issued to the second party subject to all subsequent payments paid timely by the second party as per the plan (The Plan). The company shall issue the possession letter only after having received the occupation certificate from the competent authority in relation to the commercial complex: **(Emphasis supplied)** (As per BBA page no. 17 of the complaint)
16.	Total sale consideration	Rs.29,35,840/- (As per clause 2 of BBA page no. 14 of the complaint)
17.	Amount paid by the complainant	Rs.29,35,840/- (as alleged in para 12 at page 8 of complaint)
18.	Assured return paid by the respondent ***[From January, 2017 till April, 2021]***	**Rs.7,89,597/-** (as per details provided at page no.71 of reply)
19.	Application for grant of OC	22.12.2022 (As per page no. 38 of the reply)

20.	Offer for fit-out of possession	21.09.2023 (As per page no. 65 of the reply)
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complainant:

3. The complainant has made the following submissions: -

I. That the complainant is a law abiding and old age citizen of India, who is resident of House No: 04, Village: Molahera, Gurugram, Haryana-122015 and had applied for booking of a commercial shop in the Affordable Housing Project of the respondent under the name and style of "RIDDHI SIDDHI" located in the revenue village of Kherki Majra Dhankot, Sector-99, Gurugram, Haryana.

II. That the respondent is engaged in the construction and development of real estate projects and is responsible for the development of the project, hence, is a promoter under Section 2(d) of the Act. The affordable Housing real estate project "RIDDHI SIDDHI" located in the revenue village of Kherki Majra Dhankot, Sector-99, Gurugram, Haryana came to the knowledge of the complainant through its authorized representatives, for and on behalf of the respondent making tall claims in regard to the project and the respondent lured the complainant for booking a unit in the above said project of the respondent.

III. That the complainant had booked a commercial space/shop named as "99 MARINA BAY" on dated 29.10.2016 in the project of the respondent. The respondent had allotted a commercial space/shop bearing No. 021, having admeasuring 248.80 sq. Ft. approx super area (the "Unit") in "RIDDHI SIDDHI" located in the revenue village of Kherki Majra Dhankot, Sector-99, Gurugram, Haryana.

IV. That relying on the representations, warranties and assurances of the respondent about the timely delivery of possession, and accordingly the respondent had executed shop buyer agreement on dated 30.12.2016 for the sale of the shop for a total sale consideration of Rs. 29,35,840/.

V. Thereafter, with dream of owning a commercial shop and some regular income in old age which was advertised to be a progressive and aesthetic property, the complainant opted a "super flexi payment benefit assurance plan" in short (assured return plan).

VI. That the complainant has already paid 100% payment to the respondent as per demand of the respondent in respect of the unit from 2016 to 2019. It is clearly shown in the illegal and unlawful intimation of due instalment issued by the respondent on dated 18.05.2021 without issuing valid offer of possession and OC.

VII. That the shop buyer agreement was executed between the parties on dated 30.12.2016 and as per clause a of super flexi payment benefit plan of the shop buyer's agreement, the respondent had agreed to pay monthly installment for super flexi payment benefit plan till the date of issuance of possession letter, postdated cheques for the same shall be issued in advance for every subsequent 6 months but the respondent failed to pay monthly installment of assured return as per clause of the agreement to the complainant. The chart of all monthly payment of assured return paid to the complainant are as follows:

S.No	DATE	AMOUNT
1.	19.07.2017	Rs. 8,257/-
2.	19.08.2017	Rs. 8,257/-
3.	18.09.2017	Rs. 8,257/-

4.	21.10.2017	Rs. 8,257/-
5.	14.11.2017	Rs. 8,257/-
6.	07.02.2018	Rs. 11,010/-
7.	07.02.2018	Rs. 11,010/-
8.	15.03.2018	Rs. 11,010/-
9.	06.04.2018	Rs. 11,010/-
10.	10.05.2018	Rs. 11,010/-
11.	17.08.2018	Rs. 11,607/-
12.	06.11.2018	Rs. 13,761/-
13.	01.12.2018	Rs. 14,600/-
14.	03.01.2019	Rs. 16,514/-
15.	08.02.2019	Rs. 16,514/-
16.	07.03.2019	Rs. 16,514/-
17.	15.04.2019	Rs. 16,514/-
18.	03.05.2019	Rs. 16,514/-
19.	10.06.2019	Rs. 16,781/-
20.	03.07.2019	Rs. 19,266/-
21.	06.08.2019	Rs. 19,266/-
22.	10.09.2019	Rs. 19,266/-
23.	05.10.2019	Rs. 19,266/-
24.	14.11.2019	Rs. 19,266/-
25.	05.12.2019	Rs. 22,019/-
26.	07.01.2020	Rs. 22,019/-
27.	05.02.2020	Rs. 22,019/-

28.	05.03.2020	Rs. 22,019/-
29.	03.04.2020	Rs. 22,019/-
30.	07.05.2020	Rs. 22,019/-
31.	06.06.2020	Rs. 22,019/-
32.	04.08.2020	Rs. 22,630/-
33.	04.08.2020	Rs. 22,630/-
34.	05.09.2020	Rs. 22,630/-
35.	06.10.2020	Rs. 22,630/-
36.	03.11.2020	Rs. 22,630/-
37.	21.12.2020	Rs. 22,630/-
38.	11.02.2021	Rs. 22,630/-
39.	02.03.2022	Rs. 22,018/-
40.	12.07.2022	Rs. 22,019/-
41.	12.07.2022	Rs. 22,019/-

VIII. That the respondent has not mentioned anything or any clauses in the shop buyer agreement regarding delivery of the possession of the commercial shop. In that case where possession clause is not mentioned in the agreement then it would be calculated according to the Affordable Housing Policy, 2013.

IX. Therefore, their license bearing no. 84 of 2014 was issued to the respondent on dated 09.08.2014 and approval of building plan on dated 17.10.2014 and environment clearance on dated 22.01.2016.

X. That the policy prevails over any agreement executed inter se the parties and thus, the due date of possession is to be calculated in accordance with the policy. The date of approval of environment clearance has been given as 22.01.2016. Whereas, the date of sanction of building plan is 17.10.2014. The due date of possession is calculated from the date of sanction of environmental clearance i.e.; 22.01.2016, being later which comes out to be 22.01.2020.

XI. That even after approx 4.5 years of delay, the respondent has not handed over the possession of the unit, till date. The respondent has instead always been vague and ambiguous in the speaking about the status of development in the project. The project is still not in a position to be completed any time soon and the respondent has only delayed the construction by giving frivolous excuses.

XII. That the total amount paid by the complainant is of Rs 29,35,840/- towards the total sales consideration of the unit. Therefore, the complainant 12.07.2022has already paid 100% of the total cost of the unit till 29.10.2019.

XIII. That thereafter, the malafide conduct and unlawful activities of the respondent continued to be seen in its conduct as the delivery of the possession has been delayed by a very long period of almost 4.5 years and have consequently caused the complainant to go through mental agony and financial distress. The respondent has neither issued offer of possession nor occupation certificate has been granted to the respondent till date which is evident from the latest status report generated on dated 17.07.2024 from the site of Department of Town & Country Planning Government of Haryana that no OC has been granted to the respondent till date.

XIV. That the respondent paying absolutely no heeds to the requests and inquires of the complainant, keeping the complainant in the dark and consequently caused the complainant to go through mental agony and financial distress.

C. Relief sought by the complainant:

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

I. Direct the respondent to pay monthly assured return to the complainant till date of issuance of valid offer of possession and grant of OC.

II. Direct the respondent to carry out the title registration/ execution of conveyance deed of the unit and to handover the physical vacant possession of the unit with immediate effect.

III. Direct the respondent to provide the complainant with prescribed rate of interest on delay in handing over of possession of the unit/ flat on the amount paid by the complainant from the due date of possession as per the buyer's agreement till the actual date of possession of the apartment.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions: -

i. That the complainant approached the respondent for purchase of the premises, whereby, the complainant and the respondent entered into a builder buyer's agreement dated 30.12.2016 for purchase of the premises for a total sale consideration of Rs.29,35,840/- (exclusive of taxes, GST and other cesss) payable under any other statute).

ii. That as per the terms of the BBA, the respondent was liable to deliver the possession of the promises and subsequent execution of the conveyance deed in favour of the complainant, only on the complainant having discharged all the due obligations he is bound to pay as per the terms of the BBA. The respondent has on several occasions requested and reminded the complainant to fulfil his due obligations as per the terms of the BBA, but to no avail, the complainant has been persistent in his default. It will be a travesty of justice, violation of the principle natural justice and contrary to laudable object behind enacting RERA Act, 2016 if the Appellant Company is made to suffer in this way at the hands of a dishonest allottee who has not made the timely payments in the first place.

iii. That this Ld. Authority must take into account the fact that due to the outbreak of the pandemic Covid-19 in March 2020, a National Lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view the difficulties in completing the project by Real Estate Developers, this Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter, due to the second covid wave from January to May 2021 once again the construction activities came to a standstill. The covid pandemic led to severe shortage of labour and disruption in supply chain of the raw materials which resulted in the delay in completing the construction of the project for which the time of 6 months granted by this Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid lockdown. The ld. Authority is being requested to consider the office memorandum dated 13.05.2020 issued by Ministry of Housing and Urban Affairs along with Town and Country Planning Notification dated 28.07.2020. By virtue of the said notification moratorium period from 01.03.2020 to 30.09.2020, was allowed for all existing projects for the purpose of making various time-bound compliances and payments. Thereafter the Town and Country Planning vide notification dated 26.06.2021 extended the moratorium period from

01.04.2021 to 31.05.2021, was allowed for all existing projects for the purpose of making various time-bound compliances and payments. The ld. Authority while computing the delayed possession charges has failed to grant the Appellant concession of nine months as enunciated in the said notifications. Further, the Ld. Authority must consider that hat the construction of the project had been stopped / obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, New Delhi; Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi; Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period. All these contributory pollutants were deliberated upon at length before this Tribunal from time to time and detailed orders covering all the facets of air pollution were covered under different orders of the Tribunal. Appellant refers to the orders of the Tribunal dated 26th November,2014, 04th December, 2014, 07th April, 2015, 10th April, 2015, 28th April, 2015, 18th May, 2015 and 11th December, 2015. All these orders/judgments dealt with the various sources of pollution.

iv. While adjudicating the instant complaint should not be oblivious of the material facts that the respondent has to face financial hardship simultaneously on three accounts for the delay in constructing the project as it has to pay an hefty amount of fees in renewing its License by DCP, Haryana, a fee for extension of registration under RERA Act, 2016 (which cumulatively runs in crores of rupees) and the delayed possession charges for non-delivering the possession to the complainant. The present project is an affordable group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the Appellant Company was paid the allotment price in installment. Though, the allotment price was fixed by the Government of Haryana in the year 2013 but the same was not revised till date and the profit margin of Appellant Company is capped at 15% of total consideration amount of concerned unit. Although the construction cost got increased manifold but the Government of Haryana had failed to increase the allotment price. The Government of Haryana had failed to take into account the increase in the construction cost since the promulgation of the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of Affordable Housing Policy, 2013.

v. That the respondent had already got the deemed occupation certificate in terms of Regulation 4.10 of Haryana Building Code, 2017. Pertinently, the respondent had applied for the OC before the Directorate of Town and Country Planning, Haryana for the grant of OC way back on 22.12.2022. The DCP reverted back only on 10.03.2023 after a period of 60 days from the date of application demanding certain documents from the answering-respondent. It is necessary to point out here that as per the Regulation 4.10 of Haryana Building Code, 2017, the 'Occupancy Certificate' is deemed to have been issued after completion of 60 days from the date of filing the application.

vi. It is also submitted that the respondent had obtained the necessary approvals and NOCs on the following dates: -

Particulars	Date
Application for Occupation Certificate	20.12.2022
Approval of electrification plan	15.06.2022
Registration of lift	15.04.2023
Fire Safety Certificate	24.05.2023
Approval of HT Electric Installation	08.06.2023
Approval of Single Line Diagram	02.06.2023
Approval of Services Plan	27.12.2023

vii. That only after obtaining the necessary approvals and NOCs from the concerned competent authorities, a fit-out possession was offered to the complainant on 21.09.2023 stating that the building was safe and fit to be inhabited and the respondent-allottee was requested to take over the possession of the unit in view of deemed issuance OC as per regulation 4.10 of Building Code, 2017. Along with the offer of possession the respondent had also requested the complainant to pay the outstanding demand as stipulated in the demand letter. It is also pertinent to submit the complainant has till date failed to pay the outstanding demand. If the complainant at all is entitled for interest for delayed possession, he is entitled only till the date of offer of possession.

viii. That the claim of the complainant for Assured Return along with Delayed Possession Charges/Compensation is wholly tenable and unheard of. It is humbly submitted that it is not within the jurisdictional compass of this Hon'ble Authority to adjudicate upon the claim regarding Assured Return. It is humbly submitted that the Hon'ble Authority, having been duly constituted under the provisions of RERA Act, 2016, and empowered to deal with the questions relating to Delayed Possession and Execution of Conveyance deed of the premises in question, as the sole object of the RERA Act, 2016 is to ensure timely possession of the premises to the allottees by the promoters/builders. It is humbly submitted that the question of Assured Return is purely of civil nature, outside the jurisdiction and ambit of the RERA Act, 2016, thereby, disentitling the Hon'ble Authority to deal with any question relating to Assured Return.

ix. That the delivery of the shop by the respondent within the agreed period of 4 years from the date of grant of Building Approvals or from the date of grant of environmental clearance which is later, was incumbent upon the complaint making timely payments. The complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due instalments. Therefore, the complaint is forbidden to demand the timely performance of the "contractual obligation' by the respondent wherein the complaint herself had failed to perform his part of the contractual obligations' on time.

x. That since the said project is located at a prime location near the Dwarka Expressway, Gurugram and there is huge premium in the open market on the flats situated in said project which would compensate the allottees of the project in more than adequate manner including any compensation for the delay in delivery of the project. This is further to note here that the respondent is not seeking any enhancement of price or payment other than what has been prescribed under the Affordable Housing Policy, 2013.

xi. 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:

6. 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

7. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

9. 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.

F. Findings on the objections raised by the respondent:

F. I Objection regarding force majeure conditions:

10. The respondent-promoter has raised the contention that the construction of the project has been delayed due to force majeure circumstances such as orders/restrictions of the NGT and shortage of labour, demonetization and outbreak of Covid-19 pandemic, etc. However, all the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Therefore, the respondent cannot categorize them as force majeure events. Thus, the same is devoid of merits and lastly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was 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. Therefore, it is

nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay monthly assured return to the complainant till date of issuance of valid offer of possession and grant of OC.

G.II Direct the respondent to carry out the title registration/ execution of conveyance deed of the unit and to handover the physical vacant possession of the unit with immediate effect.

G.III Direct the respondent to provide the complainant with prescribed rate of interest on delay in handing over of possession of the unit/ flat on the amount paid by the complainant from the due date of possession as per the buyer's agreement till the actual date of possession of the apartment.

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

12. The complainant in the present complaint is seeking payment of pending down payment benefit amount as per the terms of the agreement dated 30.12.2016. The complainant has submitted that the respondent was obligated to pay super flexi benefit amount to the complainant for the period commencing from the date on the completion of 25% after the payment of the booking amount till the date of issuance of offer of possession after receipt of occupation certificate. However, the respondent paid the said benefit amount/assured return to the complainant till April, 2021 and thereafter stopped the payment of the

assured return. The respondent has contended that the Authority does not have jurisdiction to adjudicate the present complaint.

13. The Authority observes that money was taken by the promoter as deposit in advance against allotment of immovable property in favour of the allottee and in view of taking sale consideration by way of advance, the promoter promised certain amount by way of down payment benefit amount for a certain period. So, on its failure to fulfil that commitment, the allottee has a right to approach the Authority for redressal of his grievances by way of filing a complaint. Further, if the project in which the advance has been received by the developer from an allottee is an ongoing project as per Section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. Thus, the promoter is liable to pay that amount as agreed upon.

14. In the present complaint, the super flexi payment benefit was payable as per clause 5 A & B of the agreement dated 30.12.2016, which is reproduced below for the ready reference:

> *"5.B. Super flexi payment benefit amount shall be payable for the period commencing on the completion of 25% by the 2nd party after the payment of the booking amount and till the date the letter of offering possession of the unit (the possession letter) is issued to the second party subject to all subsequent payments paid timely by the second party as per the plan (The Plan). The company shall issue the possession letter only after having received the occupation certificate from the competent authority in relation to the commercial complex."*

Further, the Super Flexi Payment Benefit Plan (The Plan) provides that the benefit amount shall be payable upon completion of 25% of payment after the booking amount. Thus, the agreed super flexi payment benefit amount was payable after receipt of payment of 25% of sale consideration after the booking amount till the letter for offer of possession is issued to the complainant.

15. In light of the reasons mentioned above, the Authority is of the view that as per the agreement dated 30.12.2016, it was obligation on the part of the respondent to pay the down payment benefit. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in agreement dated 30.12.2016. Accordingly, the liability of the respondent to pay down payment benefit as per agreement is still continuing. Hence, the respondent/promoter is directed to pay monthly payment benefit to the complainant at the agreed rate from the date of receipt of payment of 25% of sale consideration after the booking amount till issuance of valid offer of possession to the complainant after receipt of occupation/completion certificate, as per the agreement dated 30.12.2016, after deducting the amount already paid on account of monthly benefit amount to the complainant.

16. Further, the complainant is seeking delay possession charges at prescribed rate from the respondent in terms of Section 18 of the Act, 2016.

17. **Due date of possession:** That as per Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

> *1 (iv)*
> *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.*
>
> ***(Emphasis supplied)***

18. The respondent has obtained environment clearance and building plan approval in respect of the said project on 22.01.2016 and 17.10.2014 respectively. Therefore, the due date of possession is being

calculated from the date of environmental clearance, being later. The due date of possession of the unit as per Clause 1(iv) of the Affordable Housing Policy, 2013 is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016, being later. Therefore, the due date of possession comes out to be 22.01.2020.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. Rule 15 has been reproduced as under: -

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

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., 07.04.2026 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—*
> *(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;"*

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 complainant in case of delay possession charges.

24. The counsel of the respondent during proceedings dated 07.04.2026 stated that the respondent has yet obtained the occupation certificate from the competent Authority which was applied in the year 202 and which is expected within one month.

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 provisions of the Act. It is determined that the possession of the subject unit was to be delivered by 22.01.2020. However, the respondent has failed to hand over possession of the subject unit till the date of this order. 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. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the booked unit to the complainant. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the promoter as well as allottees.

26. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate i.e., @10.80% p.a. w.e.f. 22.01.2020 till offer of possession plus 2 months after obtaining completion 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.

27. The Authority observes that now, the proposition before the Authority whether an allottee who is entitled for down payment benefit even after expiry of due date of possession, is entitled to both the down payment benefit as well as delay possession charges?

To answer the above proposition, it is worthwhile to consider that the down payment benefit is payable to the allottee on account of a provision in the BBA. The Authority observes that the purpose of down payment benefit and delay possession charges is similar and the same is to be provided to the allottee to safeguard his interest as the money of the allottee is continued to be used by the promoter even after the promised due date and in return, he is to be paid either the down payment benefit or delay possession charges whichever is higher as the payment of assured return and the delay possession charges would result in double benefit to the complainant and would not balance the equities between the parties. Accordingly, the Authority decides that the allottee shall be entitled to down payment benefit or delay possession charges, whichever is higher without prejudice to any other remedy including compensation.

28. The Authority observes that as per the agreement dated 30.12.2016, the super flexi payment benefit amount which has been committed by the promoter is @Rs.24,465/- per month till issuance of possession. Whereas the delayed possession charges @10.80% of the paid-up amount is payable approximately Rs.26,422.56/- per month from the due date of possession till offer of possession after receipt of occupation certificate from the competent authority.

29. Accordingly, the Authority decides that in cases where super flexi payment benefit is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to down payment benefit or delayed possession charges, whichever is higher, without prejudice to any other remedy including compensation.

30. If we compare this down payment benefit with delay possession charges payable under proviso to Section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the delay possession charges are higher. Therefore, considering the above said facts, the Authority directs the respondent to pay interest to the complainant at the prescribed rate @10.80% per annum on account of delayed possession charges, from the due date of possession i.e., 22.01.2020 till issuance of valid offer of possession after obtaining completion certificate from the competent authority plus two months or actual handing over of possession whichever is earlier being higher, than monthly payment benefit.

31. It is further observed by the Authority that in the present complaint, as per super flexi payment benefit plan, the respondent has paid monthly benefit to the complainant till April, 2021. However, the due date of possession is 22.01.2020 and the delay possession charges are payable being higher than super flexi payment benefits as detailed in para 28 to 30 above. Accordingly, the respondent shall deduct/ adjust the amount paid to the complainant on account of super flexi benefit plan from 22.01.2020 (due date of possession) till benefits paid to the complainant i.e., April 2021, from the delay possession charges payable till date.
32. The respondent is directed to pay the outstanding accrued interest till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.
33. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour 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. Therefore, the respondent is directed to handover possession of the flat/unit after obtaining the occupation certificate from the competent authority 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.

H. Directions of the Authority:

34. 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/promoter is directed to pay interest to the complainant against the paid up amount at the prescribed rate of 10.80% per annum for every month of delay on account of delayed possession charges, from the due date of possession i.e., 22.01.2020 till issuance of valid offer of possession after obtaining completion certificate from the competent authority plus two months 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, ibid.

ii. The respondent shall deduct/ adjust the amount already paid to the complainant on account of monthly benefits from 22.01.2020 till March, 2022.

iii. The arrears of such interest accrued from 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order after adjustment of outstanding dues, if any, from the complainant and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per Rule 16(2) of the Rules.

iv. The rate of interest chargeable from the allottee(s) 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.

v. The respondent is directed to handover the possession of the unit on payment of outstanding dues if any, after obtaining occupation certificate from the competent authority and to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

vi. The respondent shall not charge anything from the complainant which is not the part of the agreement dated 30.12.2016 as well as Affordable Housing Policy, 2013.

35. Complaint stands disposed of.

36. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026