

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

Date of filing of complaint: 31.03.2025
Date of Order: 29.09.2026

Deepak Yadav

R/o: House No. 148/C, Gali No. 7, Rao Nihal
Singh Marg, Kapashera, Southwest Delhi, Delhi -
110037

Complainant

Versus

Apricus Hills Private Limited

Regd. office at: H. No. 86, New Pole No. NJF XW-
23, Village Pandwala Kalan, Najafgarh, Southwest
Delhi, Delhi - 110043

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Sukhbir Yadav (Advocate)

Complainant

Sh. Abhimanyu Singh (Advocate)

Respondent

ORDER

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

Sr. No.	Particulars	Details
1.	Name of the project	Yashika 104, Sector 104, Gurugram, Haryana
2.	Total area of the project	5.0375 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no.	101 of 2021 dated 28.12.2021 valid upto 07.12.2026
5.	HRERA registered/ not registered	Registered vide no. 44 of 2022 dated 25.05.2022 Valid till 06.01.2027
6.	Allotment Letter	02.09.2022 (As on page no. 26 of complaint)
7.	Apartment Buyers Agreement	24.01.2023 (As on page no. 27 of complaint)
8.	Date of approval of building plans	04.03.2022 (as per project details)
9.	Date of environment clearance	15.03.2022 (as per project details)
10.	Unit no.	706, Floor-7 th , Tower no.-T3 (As on page no. 36 of complaint)

11.	Unit measuring	638.198 sq.ft. [Carpet Area] (As on page no. 36 of complaint) 62.65sq.ft. [Balcony Area] (As on page no. 38 of complaint)
12.	Possession clause as per Affordable Housing Policy, 2013	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.
13.	Due date of possession	15.03.2026 (Calculated from the date of environment clearance being later)
14.	Payment Plan	Construction linked
15.	Total sale consideration	Rs.27,43,081/- (As on page no. 38 of complaint)
16.	Total amount paid by the complainant	Rs.13,85,255/-
17.	Demand letter against the stage "On Completion of 1/3 rd slab of the Super Structure"	20.11.2023 (As on page no. 76 of complaint) [Note: A demand of Rs.6,01,233.28/- was raised]
18.	Reminders	04.10.2024 (As on page no. 16 of reply)
19.	Pre cancellation letter	22.10.2024 (As on page no.17 of reply)

20.	Cancellation letter	05.11.2024 (As on page no. 77 of complaint)
21.	Publication in newspaper [Note: To make the payment within a period of 15 days]	06.11.2024 (As on page no. 19 of reply)
22.	Publication cancellation regarding	23.11.2024 (As on page no. 21 of reply)
23.	2 nd Cancellation Letter	22.11.2024 (As on page no. 79 of complaint)
23.	Amount refunded by respondent	Rs.13,55,755/- (As on page no. 22 of reply)
24.	3 rd parts rights	11.04.2025 (As on page no.15 of reply)
25.	Occupation certificate	Not obtained
26.	Offer of Possession	Not offered

B. Facts of the complaint:

3. That the complainants have made following submissions:
 1. In the month of July 2022, complainant/petitioner, Deepak Yadav received a marketing call from the office of the respondent for booking of an affordable flat in the proposed project "Yashika 104", and the caller represented himself as a manager of the respondent company and marketed the project situated at Sector - 104, Gurgaon. The complainant along with his family visited the office of the respondent party and the project site of the respondent/builder. There, the complainant and his family met with the marketing staff and office

bearers of the respondent company and got information about the project. The marketing staff of the respondent party allured the complainants by elaborating all the specifications of the said project and assured of timely delivery of the unit under construction linked payment plan.

- II. Believing on the representation and assurance of the respondent, the complainant applied for the booking of a residential unit in the above-said project of the respondent vide application no. 57811 after making payment of Rs.1,34,021/- under affordable Group Housing Policy, 2013.
- III. The draw of lots of the said project was conducted on 31-08-2022 wherein the Complainant emerged as a successful allottee. Subsequently, a unit bearing No. 706 on the 7th Floor of Tower-T-03 measuring 638.198 sq. ft area along with a balcony area of 62.65 sq. ft situated in the project "Yashika 104" of the respondent was allotted to the complainant vide allotment letter dated 02.09.2022. A two-wheeler parking was also allotted to the complainant against the allotment of the said unit.
- IV. Subsequently an apartment buyer agreement was executed between the respondent and the complainant on 24.01.2023. As per Clause 1.2 of the said BBA, the total sale consideration of the said unit is Rs. 27,43,082/-. Further, as per Schedule 'E' of the said BBA, the unit has been sold by the respondents on a construction-linked payment plan.
- V. The complainant paid the initial three instalments and the 4th instalment was due on completion of the 1/3rd slab of the tower. The respondent raised the demand for the 4th instalment on 20.11.2023 amounting to Rs. 3,46,313/- and the status of construction

shown in the said demand letter was "on completion of 1/3rd slab of the super structure. The complainant inquired about the status of the construction of Tower-3 and found that even the 1st-floor slab of Tower-3 was not completed. Thereafter, the complainant asked from the staff of respondent about the status of the construction of Tower-3, he was informed by the staff of the respondent that due to NGT ban in effect from 02.11.2023, the work was stopped at the site. The complainant was further informed that due to bad air quality, the ban was going to be extended till the whole winter season.

- VI. The complainant was allotted with the said unit on a construction linked plan and the said demand stating the false status of the construction was an illegal demand and the complainant was not under any obligation to fulfil the same as per schedule 'E' of the said BBA. The complainant was willing to pay the legitimate demand of the respondent. It was on the part of the respondent to show the correct status of the construction to the allottee and raise demand according to the same.
- VII. The respondent issued a cancellation letter on 05.11.2024 on account of non-payment of the outstanding amount. Thereafter, the complainant visited the office of the respondent and inquired about the status of the construction. The staff of respondent ensured that the construction is in full swing and the building was soon to achieve the landmark of 1/3rd slab of the superstructure. Believing on the assurance of the staff of the respondent, the complainant made a part payment of Rs 3,00,000/- on 06.11.2024 and it was mutually agreed between the complainant and the staff of the respondent that the remaining payment shall be made as soon as the 1/3rd slab of the super structure is completed.

- VIII. Thereafter, the complainant was waiting for the fresh demand letter from the respondent on completion of 1/3rd slab of the superstructure. However, to the utter shock of the complainant, the respondent sent another cancellation letter on 22.11.2024 stating the reason of non-payment of outstanding dues. The complainant again visited the office of the respondent and asked the staff to set aside the said cancellation letter and make a fresh demand letter stating the correct status of the construction so that he can make the payment. The staff of the respondent agreed to issue a fresh demand letter. The complainant waited patiently for the demand letter till 10.01.2025 and again approached the staff of the respondent for the same. However, the staff of the respondent showed their inability to issue a fresh demand letter at that stage and asked the complainant to pay the outstanding dues which will be adjusted in the next demand letter. Thereafter, the complainant paid the outstanding amount of Rs 3,01,234/- on 10.01.2025. The complaint also wrote an E-mail on 10.01.2025 to the respondent stating that he has cleared all the outstanding demands and requested to update the current status of the project till date.
- IX. The cancellation letter dated 05.11.2024, contains that "In spite of our reminder letters dated 04/10/2024 & pre-cancellation letter 22/10/2024, you have failed to clear your outstanding dues of Rs. 6,01,233.38/-" and in cancellation letter dated 22.11.2024 it was again contented that "In spite of our reminder letters dated 04/10/2024 & pre-cancellation letter 22/10/2024, you have failed to clear your outstanding dues of Rs. 301,233.28/-", which clearly shows that on 06.11.2024, the complainant paid Rs. 3,00,000/- and the builder has to raise a fresh demand and to follow the due process of law before cancellation of the unit. Furthermore, the complainant paid Rs.

3,01,234/- on 10.01.2025. Without prejudice and admission of default, on account of non-payment of part payment, the cancellation is bad in law.

- X. As on 10.01.2025, the complainant has paid Rs 13,85,255/- which amounts to more than 50% of the total sale consideration of the unit. The next instalment i.e. 5th instalment is due on completion of the 2/3rd slab of the super structure which is yet to be received from the respondent.
- XI. The complainant has been consistently visiting the respondent's office and the construction site, endeavouring to obtain the status of construction of the flat. However, despite numerous visits the staff of respondents is not providing any information to the complainant stating that his unit is showing as "cancelled" in their record.
- XII. The respondent first cancelled the unit of the complainant on 05.11.2024 and after some conversation with the respondent, the complainant made part payment of Rs 3,00,000/- on 06.11.2024, receipt of which bearing number YA/ REC/ 1089 was issued by the respondent on 06.11.2024. Notably, the acceptance of payment from the allottee post cancellation of the unit implies that the allottee had his rights in the unit at the time of payment and the cancellation was impliedly revoked. Further, it was verbally settled between the respondent and the complainant that the next demand will be raised on completion of 1/3rd slab of the super structure. However, after 17 days of making part payment, the respondent again cancelled the unit of the complainant on 22.11.2024 without giving any pre-cancellation notice and publication in the newspaper.

XIII. The main grievance of the complainant in the present complaint is that despite the complainant paying more than 50% of the total sale consideration, the respondent has failed to provide the correct status of construction of his flat and arbitrarily cancelled the unit of the complainant without following the due process of law even after receiving the outstanding dues. The respondent is acting maliciously and not responding to the queries of the complainant. Also, the respondent has neither issued acknowledgement of last payment made by the complainant on 10.03.2025 amounting to Rs 3,01,234/- nor any formal revocation of cancellation has ever been shared with the complainant. This has raised serious apprehension that the respondent may create 3rd party rights in the complainant's unit and misappropriate the hard-earned money of the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent from creating 3rd party rights in the unit of the complainant.
 - ii. Direct the respondent to set aside the cancellation of the complainant's unit vide cancellation letter dated 22.11.2024 and restore the allotment.
 - iii. Pass strict and stringent orders against errant promoter and developer who take huge investments from innocent investors and then deny them the right to know status of construction as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

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. The respondent has contested the complaint on the following grounds:
- I. The complainant has filed the present complaint with the oblique motive best known to the complainant. The complainant having failed to comply with the payment schedule and demand letters is now trying to get his unit restored which has been lawfully cancelled as per the prevailing Affordable Housing Policy Scheme. Further, the unit allotted to the Complainant has already been allotted to a third party as apprised to this Hon'ble Authority vide Reply on behalf of the Respondent dated 24.04.2025 to the Application u/s. 36 RERA filed by the Complainant, therefore, the Complaint of the Complainant has become infructuous and any relief as prayed for in the present Complaint as well as in Application u/s. 36 RERA shall violate the rights of the third party who has been allotted the unit. The unit was allotted to one Smt. Sujata Bhardwaj vide Allotment-cum-Demand Letter dated 11.04.2025 which was prior to passing of the order in Application u/s. 36 RERA by this Hon'ble Authority. The allottee Smt. Sujata Bhardwaj had made all the payments and thereafter, the unit was allotted to her. Presently, the Respondent has no unit available in the project Yashika 104.
 - II. The respondent had raised demands as per the actual construction carried out in the project Yashika 104, however, the complainant only to delay in making the payments has been raising frivolous issues.

- III. The burden to establish delay of construction of Tower 3 in Yashika 104 and raising demands prior to reaching the construction stage squarely falls upon the complainant as it is he who is alleging the delay. The complainant has failed to bring on record any document which establishes delay in construction and raising pre-mature demands.
- IV. The respondent has followed due procedure as mentioned in the Affordable Housing Policy Scheme 2013 for the purpose of cancellation of unit being 706, Tower No. 3, Floor No. 7 in the project Yashika 104 located at Sector 104, Gurugram which was allotted to the complainant.
- V. The unit as mentioned above after cancellation was allotted to a new allottee who has made regular payments for the said unit. Therefore, any relief as prayed for by the complainant has become infructuous and the same cannot be granted at the back of the new allottee as such relief shall hamper the rights of the new allottee.
- VI. The demand of Rs.6,01,233.58/- was raised upon the complainant vide demand letter dated 20.11.2023 but the complainant did not pay any heed to the said demand. The complainant sat on the said demand letter for a year and did not care to fulfill the same inspite of construction reaching the appropriate stage. Further, the other allottees of the tower made payments as per demand raised after being satisfied of the raised construction.
- VII. After waiting for almost 1 year, the respondent issued a reminder letter dated 04.10.2024, thereby, reiterating the demand made on 20.11.2023 but the complainant completely ignored the said reminder letter. Thereafter, the respondent had to issue pre-cancellation letter dated 22.10.2024 as per policy. The complainant did not care to contact the respondent and kept the respondent in lurch. Therefore, the

payment due upon the complainant remained unpaid for almost 1 year, thereby, giving an impression that the complainant is no more interested in continuing with the project.

- VIII. Having no option left, the respondent was compelled to issue cancellation letter dated 05.11.2024 to the complainant and subsequently published the same in newspaper on 06.11.2024 after following due procedure.
- IX. After the cancellation and publication of the unit no. 706, tower 3 allotted to complainant was done, the complainant visited the office of the respondent and requested not to allot the unit to third party and the complainant promised to make the balance payment within 2-3 days. Thereafter, the complainant visited the office of the respondent and gave a cheque of only half of the amount due upon him i.e. Rs. 3,00,000/- and promised to make the remaining payment the next day. It was only on the assurance of the complainant that he would make the complete payment of Rs. 6,01,233/- to the respondent within 2-3 days that the amount of Rs. 3,00,000/- was accepted. It was also agreed between the parties that in the event complete payment of Rs. 6,01,233/- is not made to the respondent within 2-3 days then the unit shall stand cancelled. It was only on this positive assurance of the complainant that amount of Rs. 3,00,000/- was accepted.
- X. After waiting for further 10 days and the complainant's failure to fulfill his promise of making the complete payment due, the respondent was again compelled to issue another cancellation letter dated 22.11.2024 and subsequently published the same in newspaper on 23.11.2024.
- XI. After over 45 days of the second and final cancellation, the complainant voluntarily, arbitrarily and without any demand, made a payment of Rs. 3,01,234/- on 10.01.2025 in the account of the respondent. The said

conduct of the complainant clearly shows the malice in mind of the complainant and the same was done only in order to approach this Hon'ble Authority and show his artificial willingness to make payments. The complainant has now accepted the refunded amount of Rs. 13,55,755.58/- and has not questioned the refund.

- XII. The respondent received a total amount of Rs. 13,85,755/- (including the amount arbitrarily transferred) from the complainant towards the said unit and after going through books of accounts, the respondent refunded an amount of Rs. 13,55,755/- to the complainant on 16.04.2025 after necessary deductions. Further, after the said amount was refunded to the Complainant, the said unit was allotted to a third party on 11.04.2025.
- XIII. Apart from the complainant, the allottees of tower 3 of the Affordable Housing Project Yashika 104 complied with the demand letters which were issued as per the construction carried on at the project and made the payments as per the demand letters issued to them after being satisfied with the status of construction of the project Yashika 104.
- XIV. The other allottees of the same tower made regular payments as per the demand letters issued to them after being fully satisfied with the construction of the said project. It is germane to bring to the notice of this Hon'ble Authority that no demand was ever raised by the respondent after cancellation of the unit allotted to the complainant. The complainant, without any demands being raised by the respondent deposited the amount out of his own will which was subsequently refunded by the respondent. The respondent rather than accepting his fault and ignorance, is trying to take advantage of the deposition of amounts in the account of Respondent after cancellation of the unit.

- XV. The respondent has been duly following the timelines for completion of the project and only after achieving the demand stage, the respondent issues the demand letters to its allottees. The claim of raising demand without reaching the stage of construction as mentioned in the complaint is totally false and only made to delay making the payments to the respondent.
- XVI. The complainant is not an aggrieved person as no violation/contravention of provision of the Act has been committed by the respondent. Therefore, the complainant is not liable to any relief from this Hon'ble Authority as prayed for.
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 submission made by the parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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

10. 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.

(Emphasis supplied)

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 complainant at a later stage.

F. Findings on relief sought by the complainant:

- F.I Direct the respondent from creating 3rd party rights in the unit of the complainant.**
- F.II Direct the respondent to set aside the cancellation of the complainant's unit vide cancellation letter dated 22.11.2024 and restore the allotment.**

12. The above-mentioned relief(s) sought by the complainant are being taken up together, as they are interconnected and arise out of the cancellation of the subject unit by the respondent.
13. The complainant has sought directions for setting aside the cancellation of the subject unit and restoration of the allotment, along with a restraint against the creation of third-party rights therein. The principal issue requiring determination is whether the cancellation of the unit was carried out in accordance with the procedure prescribed under the Affordable Housing Policy, 2013, and whether the demands

raised by the respondent, which allegedly formed the basis of such cancellation, were in accordance with the payment plan opted for by the complainant.

14. As per the facts and documents placed on record, the respondent issued a demand letter dated 20.11.2023 for the fourth instalment amounting to Rs. 3,46,313/-, purportedly upon completion of one-third of the slab of the superstructure. However, the complainant has contended that the stipulated construction milestone had not been achieved in Tower-3. The quarterly progress reports (QPRs) for the period from 30.06.2023 to 30.06.2024 indicate that the requisite construction progress had not been achieved, and only approximately 18% of the construction work had been completed as on 30.06.2024. The complainant has, therefore, disputed the validity of the demand on the ground that it was not supported by the actual construction status of the project. The respondent, on the other hand, has contended that the complainant had defaulted in payment of the second and third instalments, which ultimately led to the cancellation of the allotment.
15. The Authority further observes that the complainant has placed on record the sequence of notices and cancellation proceedings initiated by the respondent. A pre-termination notice was issued on 22.10.2024, followed by a cancellation letter dated 05.11.2024 and publication of a notice in the newspaper on 06.11.2024. Thereafter, another publication was made on 23.11.2024, whereas the final cancellation letter relied upon by the parties is dated 22.11.2024. The aforesaid sequence of events reflects material inconsistencies in the cancellation proceedings, particularly with regard to the dates and the sequence in which the notices and cancellation were issued. The respondent was required to adhere to the procedure prescribed under the Affordable Housing

Policy, 2013, before terminating the allotment of the complainant. In the facts and circumstances of the present case, the respondent has failed to establish that the cancellation was effected after due compliance with the prescribed procedure.

16. The Authority also takes note of the payments made by the complainant. It has been submitted that the complainant paid Rs. 3,00,000/- on 06.11.2024 and subsequently deposited Rs. 3,01,234/- on 10.01.2025. The complainant has stated that the cancellation letters dated 05.11.2024 and 22.11.2024 reflected outstanding dues of Rs. 6,01,233.38/- and Rs. 3,01,233.28/-, respectively, thereby indicating a substantial reduction in the outstanding amount corresponding to the payment made on 06.11.2024. The complainant has further stated that a total amount of Rs. 13,85,285/- had been paid against the total sale consideration of Rs. 27,43,082/-. The respondent has contended that the payment of Rs. 3,01,234/- made on 10.01.2025 was voluntary and was made after cancellation of the allotment, and that the said amount has already been refunded to the complainant. However, the subsequent refund of the amount, by itself, does not establish that the original cancellation was validly effected in accordance with the applicable policy.
17. The Authority further observes that the stipulated date for delivery of possession of the subject unit was 15.03.2026. However, the respondent has not obtained the occupation certificate for the project as on the date of consideration of the matter. The construction-linked payment plan opted for by the complainant required the demands to be raised in accordance with the corresponding construction milestones. In view of the construction progress reflected in the QPRs and the material available on record, the respondent has failed to satisfactorily

establish that the disputed demand was raised upon achievement of the requisite construction milestone. Consequently, the said demand cannot, in the absence of proof of achievement of the stipulated milestone, be relied upon as a valid basis for cancellation of the allotment.

18. The Authority also takes note of the respondent's submission that third-party rights in the subject unit have already been created on 11.04.2025. However, the creation of third-party rights subsequent to the disputed cancellation cannot, by itself, validate a cancellation that was not carried out in accordance with the applicable policy. The said subsequent development must be considered in the context of the legality of the original cancellation and the relief sought by the complainant.
19. In view of the foregoing facts and circumstances, the Authority is of the considered view that the respondent has failed to establish that the cancellation of the subject unit was effected in compliance with the procedure prescribed under the Affordable Housing Policy, 2013. Further, the disputed demand has not been satisfactorily established to be in accordance with the construction-linked payment plan opted for by the complainant. Accordingly, the cancellation of the subject unit vide letter dated 22.11.2024 is held to be unsustainable and liable to be set aside.
20. Consequently, the relief sought by the complainant for setting aside the cancellation and restoration of the allotment deserves to be allowed. As regards the prayer for restraining the respondent from creating third-party rights, the Authority notes that, according to the respondent, third-party rights have already been created on 11.04.2025. Therefore, the prayer for a prospective restraint against the creation of third-party

rights has become infructuous to that extent. The respondent's contention regarding the creation of such rights, however, shall not, by itself, defeat the complainant's claim arising from the cancellation held to be unsustainable herein.

21. In view of the findings recorded above, the respondent is liable to allot an alternative unit to the complainant in the same project, having the same area, size, specifications and other material features as the originally allotted unit, without charging any additional amount on account of such alternative allotment.

F.III Pass strict and stringent orders against errant promoter and developer who take huge investments from innocent investors and then deny them the right to know status of construction as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

22. The Authority observes that the complainant has sought stringent action against the respondent on the ground that the construction-linked demand was raised without achievement of the requisite construction milestone and that the respondent failed to adhere to the procedure prescribed under the Affordable Housing Policy, 2013, while cancelling the allotment. In this regard, the Authority has already examined the construction status reflected in the quarterly progress reports, the disputed demand raised by the respondent and the procedure followed for cancellation of the subject unit. The Authority is of the considered view that the respondent was under an obligation to act in accordance with the provisions of the Act, 2016 and the applicable policy and to ensure transparency and fairness in its dealings with the complainant.

23. However, the prayer for passing strict and stringent orders, in general terms, cannot be allowed merely based on general allegations concerning the treatment of other allottees. Any penal action must be founded upon a specific violation of the Act, 2016, established from the material available on record, and must be taken in accordance with the applicable statutory provisions. Accordingly, the relief, to the extent it seeks general punitive directions without establishing any additional specific violation warranting such action, is not made out. The findings recorded by the Authority regarding the invalidity of the cancellation and the consequential reliefs granted to the complainant shall, however, remain operative in accordance with this order.
24. Furthermore, the Authority observes that the due date for handing over possession of the subject unit was 15.03.2026. However, the respondent has not obtained the occupation certificate from the competent authority as on the date of consideration of the present complaint. In the absence of the occupation certificate and a valid offer of possession, the respondent cannot be said to have duly discharged its obligation to deliver possession of the unit in accordance with law. The complainant is, therefore, entitled to delayed possession charges in terms of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. 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."
- (Emphasis supplied)***
25. Rule 15 has been reproduced as under for ready reference:

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.

(Emphasis supplied)

26. 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.
27. 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., 20.08.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
28. 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;"

(Emphasis supplied)

29. As per Section 19(10) of the Act of 2016, it is the obligation of the allottee to take possession within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has not been obtained by the respondent-builder till date. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till actual handing over of possession plus two months after obtaining occupation certificate from competent authority or actual handing over of possession, whichever is earlier.

G. Directions of the Authority:

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

- i. Cancellation is bad in eyes of law and hence hereby set-aside.
- ii. The respondent is directed to allot an alternative unit to the complainant in the same project, having the same area, size, specifications and other material features as the originally allotted unit, without charging any additional amount on account

of such alternative allotment. The respondent shall adjust the amount already paid by the complainant towards the sale consideration of the alternative unit, subject to reconciliation of accounts.

- iii. The respondent shall issue the necessary allotment letter and execute the requisite documents in favour of the complainant in accordance with the provisions of the Act, 2016 and the applicable Affordable Housing Policy, 2013
- iv. 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 complainant from due date of possession i.e. 15.03.2026 till offer of possession plus two months after obtaining occupation certificate from competent authority or actual handing over of possession, whichever is earlier.
- v. The respondent is directed to pay arrears of interest accrued as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- vi. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges as per above within a period of 30 days from the date of this order. The

- complainants are directed to pay outstanding dues, if any, after adjustment of delayed possession charges.
- viii. The respondent is directed to execute the conveyance deed registered in favour of the complainants within 90 days as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.
- ix. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by *Hon'ble Supreme Court* in *Civil Appeal Nos. 3864-3889/2020* decided on 14.12.2020.
31. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
32. Complaint stands disposed of.
33. File be consigned to the registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 29.09.2026