BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 20.08.2026

NAME OF THE BUILDER		M/S ASHIANA DWELLING PRIVATE LIMITED	
PROJECT NAME		"AASHIANA MULBERRY PHASE- I"	
S. No.	**Case No.**	**Case title**	**Appearance**
1	CR/909/2026	Atul Saini and Meena Saini V/S M/s Ashiana Dwelling Pvt. Ltd.	Shri Garvit Gupta Advocate and Shri Akshat Jain Advocate for the respondent
2	CR/859/2026	Stuti Singh V/S M/s Ashiana Dwelling Pvt. Ltd.	Shri Garvit Gupta Advocate and Shri Akshat Jain Advocate for the respondent
3	CR/944/2026	Bhabani Mohanty and Subhalaxmi Mohanty V/S M/s Ashiana Dwelling Pvt. Ltd.	Shri Garvit Gupta Advocate and Shri Akshat Jain Advocate for the respondent
4	CR/858/2026	Chhaya Rana and Varun Yadav V/S M/s Ashiana Dwelling Pvt. Ltd.	Shri Garvit Gupta Advocate and Shri Akshat Jain Advocate for the respondent
5	CR/862/2026	Abinash Sahoo and Susnata Sahoo V/S M/s Ashiana Dwelling Pvt. Ltd.	Shri Garvit Gupta Advocate and Shri Akshat Jain Advocate for the respondent
6	CR/884/2026	Malla Venkata Varaha Ramu and Sadaram Satya Rupa V/S M/s Ashiana Dwelling Pvt. Ltd	Shri Garvit Gupta Advocate and Shri Akshat Jain Advocate for the respondent

CORAM:

Shri Phool Singh Saini **Member**

ORDER

1. This order shall dispose of all the 6 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017

(hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **"Aashiana Mulberry Phase I"** (residential group housing colony) being developed by the same respondent/promoter i.e., Ashiana Dwelling Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with intertest and the compensation.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project: Aashiana Mulberry Phase I, Sector-2, Sohna, Gurugram
Possession clause: Clause 7.1(ii)
Subject to receipt of Occupancy Certificate within 60 days from the date of Application, the Promoter assures to hand over possession of the Apartment along with parking (if applicable) by **30th June 2019** plus a grace period of 6 months as per agreed terms and conditions unless there is delay due lo "forces majeure". Cour orders Government policy) guidelines, decisions affecting the regular developments of the real estate project. If the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment. The Promoter shall be deemed to have completed the construction as per agreed scheduled if application for grant of Occupancy Certificate is filed within the schedule given above.

Note:

1. Grace period- Since possession clause 7.1(ii) of the BBA incorporates unqualified reason for grace period/extended period of 6 months. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 7.1(ii) of buyer's agreement is allowed and included while calculating the due date of handing over of possession.

3. Due date of handing over of possession- As per clause 7.1(ii) of buyer's agreement, the due date of handing over of poss ession is 30.06.2019. Therefore, due date of handing over of possession, including 6 months of grace period, comes out to be 30.12.2019.

4. Occupation certificate- 02.11.2022.

Sr. No.	Complaint no. /title/ date of filing complaint/date of reply received	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of Possession, Offer of possession, Possession Certificate	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	**CR/909/2026** titled as Atul Saini and Meena Saini **VS** Aashiana Dwelling Private Limited **DOR-** 06.03.2026 **Reply received on-** 16.04.2026	B-1105, 11th Floor, Tower-2 admeasuring 834 sq. ft. (As per page no. 38 of complaint)	**13.04.2018** (As per page no. 29 of complaint)	**30.12.2019** Offer of possession- **28.12.2022** (As per page no. 88 of complaint) Possession certificate- **20.03.2023** (As per page no. 100 of complaint)	TSC: **Rs.6795,907 /-** (As per page no. 67 of complaint) AP: **Rs.75,22,208/-** (As per page no. 97 of complaint)	**DPC**

2.	**CR/859/2026** titled as Stuti Singh **VS** Aashiana Dwelling Private Limited **DOR-** 06.03.2026 **Reply received on-** 16.04.2026	A-1212, 12th Floor, Tower- admeasuring 994.16 sq. ft. (As per page no. 32 of complaint)	**01.06.2021** (As per page no. 29 of complaint)	**28.02.2022** Offer of possession- **16.01.2023** (As per page no. 67 of complaint) Possession certificate- **04.06.2023** (As per page no. 81 of complaint)	TSC: **Rs. 71,02,704/-** (As per page no. 20 of complaint) AP: **Rs. 81,81,804/-** (As per page no. 80C of complaint)	**DPC**
3.	**CR/944/2026** titled as Bhabani Mohanty and Subhalaxmi Mohanty **VS** Aashiana Dwelling Private Limited **DOR-** 06.03.2026 **Reply received on-** 16.04.2026	804, 8th Floor, Tower-1 admeasuring 1210 sq. ft. (As per page no. 32 of complaint)	**28.06.2017** (As per page no. 34 of complaint)	**28.12.2019** Offer of possession- **23.01.2023** (As per page no. 85 of complaint) Possession certificate- **11.03.2023** As per page no. 77 of complaint)	TSC: **Rs.65,09,750/-** (As per page no. 65 of complaint) AP: **Rs.71,36,514/-** (As page no. 90-95 of complaint)	**DPC**

4.	**CR/858/2026** titled as Chhaya Rana and Varun Yadav **VS** Aashiana Dwelling Private Limited **DOR-** 06.03.2026 **Reply received on-** 16.04.2026	A-612, 6th Floor, Tower-3 admeasuring 994.16 sq. ft (As per page no. 30 of complaint)	**20.09.2019** (As per page no. 25 of complaint)	**30.06.2020** Offer of possession- **22.12.2022** (As per page no. 72 of complaint) Possession Certificate- **24.02.2023** (As per page no. 80 of complaint)	TSC: **Rs.89,72,484/-** (As per page no. 59 of complaint) AP: **Rs.1,04,97,784/-** (As per page no. no. 88-89 of complaint)	**DPC**
5.	**CR/862/2026** titled as Abinash Sahoo and Susnata Sahoo **VS** Aashiana Dwelling Private Limited **DOR-** 06.03.2026 **Reply received on-** 16.04.2026	B-1107, 11th Floor, Tower-2 admeasuring 834.96 sq. ft.. (As per page no. 35 of complaint)	**11.10.2018** (As per page no. 30 of complaint)	**30.12.2019** Offer of possession- **16.02.2023** (As per page no. 89 of complaint) Possession Certificate- **10.04.2023** (As per page no. 77 of reply)	TSC: **Rs.73,81,907/-** (As per page no. 63 of complaint) AP: **Rs.85,87,185/-** (As per page no. 100 of complaint)	**DPC**

6.	**CR/884/2026** titled as Malla Venkata Varaha Ramu and Sadaram Satya Rupa VS Aashiana Dwelling Private Limited **DOR-** 06.03.2026 **Reply received on-** 16.04.2026	A-1212, 12th Floor, Tower-3 admeasuring 994.16 sq. ft. (As per page no. 33 of complaint)	21.08.2019 (As per page no. 29 of complaint)	**30.06.2020** Offer of possession- **03.11.2022** (As per page no. 85 of complaint) Possession certificate- **29.05.2023** (As per page no. 91 of reply)	TSC: **Rs.79,09,201/-** (As per page no. 90 of complaint) AP: **Rs. 78,61,600/-** (As per page no. 90 of complaint)	**DPC**

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOR- Date of receiving complaint

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges the entire amount along with interest and compensation.

5. It has been decided to treat the said complaint(s) as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaint(s) filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/909/2026 Atul Saini and Meena Saini V/s Ashiana Dwelling Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges.

A. Project and unit related details

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

CR/909/2026 Atul Saini and Meena Saini V/s Ashiana Dwelling Private Limited

S. No.	Particulars	Details
1.	Name and location of the project	"Ashiana Mulberry Phase-I" at Sector-2, Sohna, Gurgaon.
2.	Project area	8.7177 acres
3.	Nature of Project	Residential Group Housing Colony
4.	DTCP license no. and validity status	16 of 2014 dated 10.06.2014 valid up to 22.10.2020
5.	RERA registered/ not registered	Registered 44 of 2017 dated 11.08.2017
6.	Application form	08.04.2018 (As per page no. 24 of the complaint)
7.	Allotment letter	08.04.2018 (As per page no. 24 of the complaint)
8.	Unit No.	B-1105, 11th Floor, Tower-2
9.	Unit area admeasuring	834 sq. ft. (carpet area) (As per page no. 38 of the complaint)
10.	Date of buyer's agreement	13.04.2018

		(As per page no. 29 of the complaint)
11.	Possession clause	**7. POSSESSION OF THE SAID UNIT:** ***7.1 Schedule for possession of the apartment-*** *(ii) Subject to receipt of Occupancy Certificate within 60 days from the date of Application, the Promoter assures to hand over possession of the Apartment along with parking (if applicable) by* ***30th June 2019*** *plus a grace period of 6 months as per agreed terms and conditions unless there is delay due lo "forces majeure". Cour orders Government policy) guidelines, decisions affecting the regular developments of the real estate project. If the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment. The Promoter shall be deemed to have completed the construction as per agreed scheduled if application for grant of Occupancy Certificate is filed within the schedule given above.* (As per page no. 45 of the complaint)
12.	Due date of possession	30.12.2019 (As per clause 7.1(ii) of agreement + grace period of 6 months is allowed to be unconditional.
13.	Payment Plan	Performance Linked (As per page no. 66 of the complaint)
14.	Sale Consideration	Rs. 67,95,907/- (As per page no. 67 of the complaint)
15.	Amount paid by complainants	Rs.75,22,208/- (As per page no. 97 of the complaint)
16.	Occupation certificate	02.11.2022 (As per page 71 of reply)
17.	Offer of possession	28.12.2022

		(As per page no. 88 of the complaint)
18.	Possession Certificate	20.03.2023 (As per page no. 100 of the complaint)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

a. The present complaint has been filed by the complainants under Section 31 of the Real Estate (Regulations and Development) Act, 2016 read with Rule 28 Haryana Real Estate (Regulation & Development) Rules, 2017seeking relief in respect of the lapses, defaults and unjust and unfair trade practices on the part of the respondent.

b. The respondent offered units for sale in a group housing complex known as 'Ashiana Mulberry' which claimed to comprise multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Village Sohna, Sector 2, District Gurugram. The respondent also claimed that the respondent was entitled to construct, develop and sell the residential group housing project over the project land and that it would throughout act strictly as per the law, rules, regulations and the provisions laid down by the concerned authorities.

c. The complainants received a marketing call from the office of respondent in the month of January, 2018 for booking the above-mentioned residential project of the Respondent. The complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainants visited the sales gallery and consulted the marketing staff of the respondent. The marketing staff of the Respondent painted a very rosy picture of the project and made

several representations with respect to the innumerable world-class facilities to be provided by the respondent in its project. The marketing staff of the respondent also assured timely delivery of the unit.

d. The complainants, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent as the complainants required the same in a time-bound manner for their own use and occupation and of their family members. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the apartment to be allotted to the complainants would be positively handed over within the agreed time frame. Based on the assurances of the respondent, a booking application form was signed by the complainants on 08.04.2018 after making payment of the booking amount of Rs.1,00,000/- as evident from the stated booking application form.

e. From time to time, the respondent raised various payment demands upon the complainants towards the sale consideration and other charges in respect of the allotted unit. The complainants, always ready and willing to perform their part of the obligations and in order to avoid any delay in the allotment, construction, and delivery of possession, duly complied with such demands and made the payments as and when called upon by the respondent.

f. A copy of the agreement for sale was sent to the complainants, which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the complainants herein. Despite specific assurances of the respondent at the time of booking that the terms of the agreement would be more balanced and

non-arbitrary, the said agreement contained several clauses which were totally discriminatory and biased towards the respondent.

g. The complainants made vocal objections to the arbitrary and unilateral clauses of the agreement for sale to the respondent. The complainants repeatedly requested the respondent for execution of an agreement with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainants and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/ promoter refused to amend or change any term of the pre-printed agreement for sale and further threatened the complainants to forfeit the previous amounts paid by them if further payments are not made. The complainants had made payment of substantial amount before the execution of the agreement and hence the complainants were left with no other option but to accept the lopsided and one-sided terms of the agreement for sale. Since the complainants had duly paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to sign the dotted lines. It is pertinent to mention here that vide the said agreement for sale, respondent allotted a unit bearing no. B-1105 on 11th Floor, in Tower-T2 admeasuring 834.96 sq. ft. carpet area in the said project of the respondent.

h. Despite having made the agreement for sale dated 13.04.2018 containing terms very favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to fulfil the most fundamental obligation of the agreement, which was to handover the possession of the flat within the promised time frame, which in the present case was

delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.

i. As per the terms and conditions of the agreement for sale, the due date to handover the possession of the allotted unit was 30.06.2019. The respondent miserably failed to comply with the said due date as the same has been lapsed back in June 2019. There was inordinate delay in developing the project well beyond what was promised and assured to the complainants. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site.

j. After an inordinate and unexplained delay, the respondent, on 03.11.2022 issued offer of possession. However, the said offer of possession was incorrect as the same did not record the actual payments made by the complainants. Hence, the respondent on 28.12.2022 informed the complainants that the unit allotted to them was ready for possession and issued a revised offer of possession. The respondent had obtained the occupation certificate for the project from the competent authority on 02.11.2022 and, on the basis thereof, called upon the complainants to take possession of the said unit and complete the requisite formalities. The said communication clearly establishes that the offer of possession was made much beyond the committed period as stipulated under the agreement for sale.

k. The complainants continued to make payment towards the sale consideration amount and paid Rs.78,23,416/- out of the total sale consideration of Rs. 67,95,907/-. The respondent/promoter used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainants without any delay, rather the complainants paid more amount than the total sale

consideration and there was never any delay caused by the complainants in making such payments. The total amount paid by the complainants is evident from the No-dues certificate/Statement of Payment dated 13.03.2023 sent by the respondent.

l. Upon receipt of the offer of possession and making payment towards the total amount, the complainants approached the respondent and raised specific queries regarding the inordinate delay in completion of the project and the consequential delay in handing over possession of the allotted unit beyond the committed timeline. The complainants sought clarification regarding the compensation payable for such delay as per the terms of the agreement for sale. In response, the officials of the respondent acknowledged the delay attributable to the respondent and assured the complainants that delay possession charges/compensation, as applicable under the agreement, would be duly calculated and paid to the complainants on account of the delay caused in offering possession. The complainants, relying upon the assurances and representations made by the respondent, proceeded with the further formalities relating to possession.

m. The respondent/promoter has acted in clear breach of the terms and conditions of the agreement for sale, which was drafted by the respondent itself, and has failed to honour its own contractual and statutory obligations. Despite having delayed the possession of the unit beyond the committed timeline and assuring the payment of delayed possession compensation, the respondent has neither paid the said amount nor provided any satisfactory response to the repeated requests and representations made by the complainants. The conduct of the respondent reflects a negligent and arbitrary approach, thereby subjecting the complainants to undue hardship and financial loss, and

amounts to a violation of the provisions of the Real Estate (Regulation and Development) Act, 2016.

n. The respondent in utter disregard of its responsibilities has left the complainants in the lurch and the complainants have been forced to chase the respondent for seeking relief. Thus, the complainants have no other option but to seek justice from this Hon'ble Authority.

C. Relief sought by the complainant: -

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

a. Direct the respondent to pay delay possession charges with prescribed rate of interest.

10. 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:

11. The respondents have contested the complaint on the following grounds.

a. The respondent is engaged in the business of construction and development of real estate projects across the country and has carved a niche for itself in the real estate sector.The present reply on behalf of the respondent is being filed through Mr. Ramphal Yadav, who has been duly authorized vide Board Resolution, dated 07.11.2023, *inter alia*, to defend the respondent in various proceedings initiated against it, verify and sign pleadings and other documents etc. and do all such acts, deeds, things as may be considered necessary to represent and act for and on behalf of the respondent.

b. The complainants out of their own free will and volition approached the respondent, applied for and booked a unit bearing number B-1105 on the 11th Floor, Tower-T2 having super built up area of 1465 sq. ft. in the

Respondent's Project "Ashiana Mulberry Phase-I" situated at Sector-02, Sohna, Gurgaon, Haryana.

c. Thereafter, the agreement for sale dated 13.04.2018 was executed between the complainants and the respondent. The said agreement also contained a schedule c pertaining to payment plan linked to performance, and the complainants were under an obligation to adhere to the said payment plan.

d. The total sale consideration of the said unit was Rs.75,45,808/- towards the unit cost and Rs. 2,77,608/- towards maintenance and other charges. The respondent has duly received Rs. 78,23,416/- including the maintenance and other charges.

e. As per clause 7.1 (ii) of the said Agreement, the respondent never promised to hand over the possession till 30.06.2019. Clause 7.1 (ii) of the said agreement states that subject to receipt of occupancy certificate the respondent shall handover the possession of the unit by 30.06.2019 (plus grace period of 6 months) which was in turn conditional upon the "force majeure".

f. The factors like non-availability of construction materials, electric power slowdown, scarcity of water etc., are the substantial reasons which led to the delay in completing the construction of the project. Additionally, the construction of the project was stopped by Hon'ble National Green Tribunal pertaining to the factors of poor air quality. Thus, the calculation of period of completion for which the construction work was stopped shall be treated as zero period.

g. Hence, as per the terms of the agreement and the RERA registration, subject to timely payment by the allottees as well as subject to force majeure, the construction of the unit was to be completed by 30.06.2019 plus 6 months grace period subject to grant of occupancy certificate and

unless there is delay due to "force majeure", court order etc. Factors like delay in providing Electric Connection to the project by DHBVNL was due to NGT/SC directed construction ban totaling to more than 9 months between 2016-2022, and further lack of provisions of trunk infra by HSVP/HUDA are reasons for the non-construction. The said reasons were beyond the control of respondent. Construction of the project was stopped by the Hon'ble National Green Tribunal due to poor air quality. It took at least one month's time to remobilize the construction work at project site due to stopping construction work which further led to delay in the construction being raised.

h. The respondent had already submitted the application dated 05.04.2021 to the DTCP and even after the delay caused by the various allottees including the complainants herein, in making the payment towards their respective units and various orders of the EPCA, HSPCB and the Apex Court, has finished the construction work of Phase-I of the said project and even after delay by the DTCP, has received the occupation certificate on 02.11.2022 from the Director General, Town & Country Planning Department, Chandigarh bearing Memo No. ZP-1062/JD(RA)/2022/32955.

i. The respondent has always kept the complainants updated with respect to the development of surrounding area as well as of construction of the project. The respondent further repetitively apprised the complainants of the factors which have a visible adverse impact on the Real Estate Industry.

j. The dispute between the complainants and the respondent has already been resolved. The compensation demanded by the complainants at the time of possession had already been paid to them and the same has been

confirmed and accepted by the complainants through their e-mail on 27.12.2022.

k. Thereafter, intimation for possession hand over letter dated 13.03.2023 was sent to the complainants intimating the complainants to take possession of the said unit and parking allotment letter dated 13.03.2023 was sent to the complainants allotting their parking space bearing no. PB-367 at basement level as per the settlement.

l. After settling all the disputes and claims, the complainants took possession of the said unit on 20.03.2023 and a possession certificate was issued to them which was duly signed by the complainants and the same records that the complainants have inspected the flat and the same is in order. Further, they have no claim against the respondent after the said date.

m. In view of the aforementioned facts, the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure the interest and reputation of the respondent and therefore, the captioned complaint is liable to be dismissed in limine.

12. 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 based on these undisputed documents and submissions made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the Authority

13. 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

14. 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

15. 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.*

16. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents

F.I. Objection regarding force majeure conditions:

17. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been

delayed due to force majeure circumstances such as inordinate and excessive delay by the DTCP in renewal of respondent's license under the Haryana Development and Regulation of Urban Areas Act, 1975, suspension/restrictions imposed on construction in Haryana by various pollution control authorities, implementation of various social schemes by Government of India, various orders passed by NGT, etc. But all the pleas advanced in this regard are devoid of merit. The plea advanced that the developer has failed to handover the possession of project on time as per 'apartment buyer agreement' entered between them on dated 13.04.2018.

18. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, etc but did not particularly specify for which period such orders has been made operative for. Further, also there may be cases where allottee has not paid instalments regularly, but all the allottees cannot be expected to suffer because of few allottees. The orders passed by government or authorities or courts banning construction in the NCR region were for a very short period of time, and such exigencies should have been accounted for at the very inception itself and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong. Thus, the promoter respondents cannot be given any leniency on based of aforesaid reasons.

G. Findings on the relief sought by the complainants

G. I Direct the respondent to pay delay possession charges with p0rescribed rate of interest.

19. In the instant case instant case, the complainant wishes to continue with the project and is seeking DPC as provided under the proviso to sec 18(1) of the Act. Sec 18(1) proviso reads as under:

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> ...
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*
> *[Emphasis Supplied]*

20. The complainant-allottee has paid an amount of Rs.75,22,208/- against the sale consideration of Rs.67,95,907/- for the unit in question to the respondent.

21. The promoter has proposed to hand over the possession of the apartment by 30.06.2019 (excluding grace period of 6 months). Since in the present matter, the buyer's agreement incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

22. As per documents available on record, the respondent has offered the possession of the allotted unit on 28.12.2022 after obtaining the occupation certificate from the competent authority on 02.11.2022. The complainant took a plea that offer of possession was to be made in 2019, but the respondent has failed to handover the physical possession of the allotted unit.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and seeking delay possession charges. However, proviso to section 18 of the Act 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 the possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules 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.*
>
> *[Emphasis Supplied]*

24. 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.

25. 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%. Accordingiy, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

26. 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]

27. 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 7.1 of the buyer's agreement executed between the parties on 13.04.2018, and the due date of as per buyer's agreement as 30.12.2019. Occupation certificate was granted by the concerned authority on 02.11.2022 and thereafter, the possession of the subject flat was offered to the complainant on 28.12.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the physical possession within the stipulated period.

28. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.12.2022. The respondent offered the possession of the unit in question to the complainant only on 28.12.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely

finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.

29. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which the complainants have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention here that complainant has paid more than 100% of sale consideration.

30. The promoter is responsible for all the obligations, responsibilities and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to continue with the project, without prejudice to any other remedy available, to pay the delay possession charges on amount received by him in respect of the unit with interest at such rate as may be prescribed.

31. 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 is established. As such, the complainants are entitled for delayed possession charges at the prescribed rate of interest i.e., @ 10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the due date of possession till the date of offer of possession i.e., 28.12.2022 plus two months to the complainants.

H. Directions of the Authority

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of interest i.e. 10.80% p.a. for from the due date of possession i.e., 30.12.2019 till the date of offer of possession i.e., 28.12.2022 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.

II. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of this order as per rule 16(2) of the rules.

III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the 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.

IV. 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.

V. The respondent is directed to not to levy, demand, or recover any amount from the complainant which is not expressly stipulated in the builder buyer agreement.

VI. 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.

33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
35. Files be consigned to registry.

(Phool Singh Saini)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 20.08.2026

HARERA
GURUGRAM