

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

Date of order: 14.08.2026

Name of Promoter		Ashiana Dwellings Private Limited	
Project Name		Ashiana Mulberry, Sector 02, Sohna, Gurugram	
S.no.	Complaint No.	Complaint title	Appearance
1.	CR/1043/2026	Amit Kumar Vs. Ashiana Dwellings Pvt. Ltd.	Mr. Garvit Gupta (Counsel for complainant) Mr. Aishwary Jain (Counsel for respondent)
2.	CR/1018/2026	Parul Thakran Vs. Ashiana Dwellings Pvt. Ltd.	Mr. Darshan Sharma (Counsel for complainant) Mr. Aishwary Jain (Counsel for respondent)

CORAM:

Shri Arun Kumar

Chairman

ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before this Authority in form CRA 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, "Ashiana Mulberry" being developed by the same respondent/promoter i.e.,

Ashiana Dwellings Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to setting aside of cancellation, assured return and direction for execution of the conveyance deed.

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

Project: "Ashiana Mulberry", Sector-02, Sohna Road Gurugram					
1. Nature of Project- Group housing Colony 2. DTCP License no. 16 of 2014 dated 10.06.2011 3. RERA registration – 44 of 2017 dated 11.08.2017 valid upto 30.06.2020 4. Occupation certificate- 02.11.2022 5. Possession clause in CR/1043/2026: 11.2 <i>Shall endeavor to complete the construction work of the said apartment/building thereof within a period of 39 (Thirty Nine) months from the date of this agreement or start of construction after grant of environment clearance whichever is later and a grace period of six months and shall thereafter apply for the grant of OC.</i> 6. Possession clause in CR/1018/2026: 7.1 <i>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 the parking by 30th June 2019 plus a grace period of 6 months as per agreed terms and conditions unless there is delay due to force majeure.</i>					
S. No.	Complaint No., Case Title, and Date of filing of complaint and reply received	Unit no. & size	Date of execution of BBA/Offer of possession/ Possession certificate	Sale Consideration (S.C)/ Total Amount paid by the complainants (A.P)	Relief Sought
1.	CR/1043/2026 Amit Kumar V/S Ashiana Dwellings Private Limited	Unit No. C-504, 5th floor, T1 1210 sq. ft. (super built up area)	B.B.A:27.10.2015 (page 32 of complaint) O.O.P:23.11.2022 (page 65 of complaint)	S.C: Rs. 69,33,250/- (page 51 of complaint) A.P.:	1. Interest for every month of delay at prevailing rate of interest from 27.01.2019 till 05.02.2023.

	DOF: 18.03.2026 Reply: 22.04.2026	(page 27 of complaint)	P.C: 05.02.2023 (page 70 of reply)	Rs. 74,06,254/- (page 82 of complaint)	
2.	CR/1018/2026 Parul Thakran V/S Ashiana Dwellings Private Limited DOF: 20.03.2026 Reply: 22.04.2026	Unit No. A- 512, 5th floor, T3 994.16 sq. ft. (carpet area) (page 25 of complaint)	B.B.A:16.11.2018 (page 21 of complaint) O.O.P:14.02.2023 (page 73 of complaint) P.C: 06.04.2023 (page 70 of reply)	S.C: Rs. 83,82,554/- (page 26 of complaint) A.P.: Rs.81,94,265/- (page 75 of complaint)	1. Direct the respondent to pay delay possession interest on the amount paid by the complainants at the prescribed rate of interest till the actual date of possession every month along with arrears as per the provisions of the RERA Act, 2016.

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

Abbreviation Full form

DOF	Date of filing of complaint
SC	Sale consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer Agreement
O.O.P	Offer of Possession
P.C.	Possession Certificate

- The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1043/2026 Case titled as Amit Kumar V/S Ashiana Dwellings Private Limited** are being taken into consideration for determining the reliefs of the allottee(s) qua setting aside of cancellation, leasing of unit, payment of lease rental, delay possession charges and assured return.

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/1043/2026 titled as Amit Kumar V/S Ashiana Dwellings Private Limited

S.No.	Particulars	Details
1.	Name of the project	"Ashiana Mulberry" Sector, 2 Sohna, Gurugram
2.	Nature of Project	Group housing colony
3.	DTCP License	16 of 2014 dated 10.06.2011
4.	Project Area	10.25 acres
5.	HRERA Registration	Registered Vide no. 44 of 2017 dated 11.08.2017 valid upto 30.06.2020
6.	Unit no.	C-504, 5 th floor, T1 (page 27 of complaint)
7.	Unit admeasuring	1210 sq. ft. (super built up area) (page 27 of complaint)
8.	Builder Buyer agreement	27.10.2015 (page 32 of complaint)
9.	Possession Clause	11.2 <i>Shall endeavor to complete the construction work of the said apartment/building thereof within a period of 39 (Thirty Nine) months from the date of this agreement or start of construction after grant of environment clearance whichever is later and a grace period of six months and shall thereafter apply for the grant of OC.</i> (page 39 of complaint)

10.	Start of Construction	Not on record
11.	Due date of possession	27.07.2019 (calculated 39 months from the date of buyers' agreement including grace period of 6 months)
12.	Total sale Price	Rs.69,33,250/- (page 51 of complaint)
13.	Amount Paid	Rs.74,06,254/- (as per No dues certificate issued by respondent page 82 of complaint)
14.	Offer of possession	23.11.2022 (page 65 of complaint)
15.	Intimation for possession hand over	30.01.2023 (page 85 of complaint)
16.	Occupation certificate	02.11.2022 (as per page 58 of reply)
17.	Possession Certificate	05.02.2023 (page 70 of reply)
18.	Conveyance Deed	22.03.2023 (page 72 of reply)

B. Facts of the complaint.

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

- I. That complainant throughout acted as per the terms of the allotment, rules and regulations and the provisions laid down by law and no illegality whatsoever has been committed by him in adhering to his contractual obligations. The booking was made by the complainant, and the payments were made by him with all the efforts and hope to fulfil the dream of his family of having his own home and to live a peaceful and secured life.
- II. That the respondent is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The respondent is comprised of several clever and shrewd types of persons. The respondent now does not enjoy good reputation at all and has cheated many innocent people like the complainant.

- III. That as per Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of 'Promoter' and is bound by the duties and obligations mentioned in the said Act and is under the territorial jurisdiction of this Authority.
- IV. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant falls under the category of 'allottee' and has rights under the Act.
- V. That the respondent offered for sale units 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.
- VI. That the complainant received a marketing call from the office of respondent in the month of February, 2015 for booking in the above mentioned residential project of the respondent. The complainant 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 complainant visited the sales gallery and consulted with 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.

- VII. That the complainant, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent as the complainant required the same in a time-bound manner for his own use and occupation and of his 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 complainant would be positively handed over within the agreed time frame.
- VIII. That from time to time, the respondent raised various payment demands upon the complainant towards the sale consideration and other charges in respect of the allotted unit. The complainant, 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.
- IX. Accordingly, the complainant remitted an amount of Rs.2,00,000/- on 17.05.2015, Rs.3,00,000/- on 24.05.2015, Rs.1,85,000/- on 30.06.2015, Rs.7,09,864/- on 18.08.2015. The said payment was duly acknowledged by the respondent through its receipts dated 20.05.2015, 02.06.2015, 01.07.2015 and 19.08.2015. The complainant thus fulfilled their payment obligations in a timely manner and there was no delay or default on their part at any stage.
- X. That the respondent vide its provisional allotment letter dated 27.10.2015 allotted a unit bearing no. C-504, on 5th floor, in Tower- T1 admeasuring 1210 Sq. ft. Super Area in the said project of the respondent to the complainant. as per the stated provisional allotment letter, the total payable amount on part of the complainant towards the said allotted unit was Rs. 69,33,250/-.
- XI. That a copy of the apartment buyer agreement was sent to the complainant, 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 complainant 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.

- XII. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement, and the abuse of dominant position is all pervasive in the terms and conditions of the agreement executed by the respondent vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.
- XIII. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the apartment buyer agreement to the respondent. The complainant 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 complainant 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 apartment buyer agreement and further threatened the complainant to forfeit the previous amounts paid by them if further payments are not made. That the complainant had made payment of substantial amount before the execution of the agreement and hence the complainant was left with no other option but to accept the lopsided and one-sided terms of the apartment buyer agreement. Since the complainant had duly paid a huge amount out of his hard-earned money, he felt trapped and had no other option but to sign the

dotted lines. Hence the apartment buyer agreement dated 27.10.2015 was executed.

- XIV. That the complainant continued to make further payments towards the sale consideration amount and paid Rs.2,40,000/- on 01.09.2017, Rs.40,173/- on 07.09.2017, Rs.28,29,668/- on 07.09.2017, Rs.1,00,000/- on 06.11.2017. respondent acknowledged the said payment vide its receipts dated 01.09.2017, 19.09.2017, 08.11.2017.
- XV. That despite having made the apartment buyer agreement dated 27.10.2015 containing terms very much 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 perform 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.
- XVI. That the complainant continued to make further payments towards the sale consideration amount and paid Rs.2,40,000/- on 01.09.2017, Rs.40,173/- on 07.09.2017, Rs.28,29,668/- on 07.09.2017, Rs.1,00,000/- on 06.11.2017. Respondent acknowledged the said payment vide its receipts dated 01.09.2017, 19.09.2017, 08.11.2017.
- XVII. That it is pertinent to mention here that despite having made the apartment buyer agreement dated 27.10.2015 containing terms very much 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 perform 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.

- XVIII. That as per Clause 11.2 of the apartment buyer's agreement dated 27.10.2015, the respondent was obligated to hand over possession of the allotted unit within a period of 39 months from the date of execution of the said agreement or from the commencement of construction after receipt of the environment clearance, whichever was later. Accordingly, the due date for handing over possession, in terms of the apartment buyer's agreement, was 27.10.2015.
- XIX. That the respondent on 23.11.2022 informed the complainant that the unit allotted to them was ready for possession and issued an offer of possession. It was stated therein that 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 complainant 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 apartment buyer agreement. Vide the stated offer of possession, it was acknowledged by the respondent that the total amount paid by the complainant till the stage of offer of possession was Rs. 63,97,007/-.
- XX. That the complainant continued to make the payments strictly in accordance with the demands raised by the respondent. Thereby, making a payment of Rs.76,75,644/- out of the total sale consideration of Rs. 69,33,250/-. It is submitted that 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 complainant without any delay, rather the complainant have paid more amount than the total sale consideration and there was never any delay caused by the complainant in making such payments. The total

amount paid by the complainant is evident from the no dues certificate & statement of payments sent by the respondent on 30.01.2023.

- XXI. That upon receipt of the offer of possession and making payment towards the total amount, the complainant 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 complainant sought clarification regarding the compensation payable for such delay as per the terms of the apartment buyer agreement. In response, the officials of the respondent acknowledged the delay attributable to the respondent and assured the complainant that delay possession charges/compensation, as applicable under the agreement, would be duly calculated and paid to the complainant on account of the delay caused in offering possession. The complainant, relying upon the assurances and representations made by the respondent, proceeded with the further formalities relating to possession.
- XXII. That till the offer of possession, the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the apartment in question to the complainant as per the terms of the apartment buyer agreement. The respondent deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant. It is unambiguously lucid that no force majeure was involved and that the project was standstill for several years and there was no valid reason for delay in handing over the possession. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers.

- XXIII. That thereafter, upon completion of the requisite formalities and payment of the demanded amounts, a conveyance deed dated 22.03.2023 in respect of the allotted unit was duly executed and registered between the complainant and the respondent. By virtue of the said conveyance deed, the respondent transferred all rights, title, and interest in the said unit in favour of the complainant. The execution of the conveyance deed, however, was carried out without prejudice to the rights and claims of the complainant towards the delayed possession compensation and other lawful entitlements arising on account of the delay attributable to the respondent. Physical possession of the unit was handed over by the respondent to the complainant on 05.02.2023.
- XXIV. That although the complainant have paid a substantial amount towards the consideration of the allotted unit out of their hard-earned money and have ultimately taken possession of the unit, the respondent has failed to compensate the complainant for the inordinate delay in handing over possession. Despite repeated requests, follow-ups, and reminders made by the complainant, the respondent has neither calculated nor paid the delayed possession charges/compensation as assured and as contractually payable. The respondent continues to retain and enjoy the amounts paid by the complainant while arbitrarily disregarding its contractual and legal obligations, thereby causing financial loss, harassment, and mental agony to the complainant.
- XXV. That the respondent/promoter has acted in clear breach of the terms and conditions of the apartment buyer agreement, 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 complainant. The conduct of the respondent reflects a negligent and arbitrary approach, thereby subjecting the complainant to undue hardship and financial loss, and amounts to a violation of the provisions of the Real Estate (Regulation and Development) Act, 2016.

- XXVI. That the respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant have been forced to chase the respondent for seeking relief. Thus, the complainant have no other option but to seek justice from this Authority.
- XXVII. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations. The cause of action arose when the respondent failed to handover possession within the prescribed timeline and compensation for the delay on its part and finally about a week ago, when the respondent refused to make payment towards the delayed possession charges and make payment towards the interest along with compensation/damage.

C. Relief sought by the complainants

9. The complainants have sought the following relief(s):
- I. Interest for every month of delay at prevailing rate of interest. from 27.01.2019 till 05.02.2023 i.e. the date of handing over of possession.
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 respondent has contested the complaint on the following grounds:

- i. That the complainant requested the respondent to allot a unit/space, admeasuring 1915 sq. ft. super area in the project "NEO Square" (hereinafter referred to as the "project").
- ii. The complainant in his complaint has alleged that the apartment buyer agreement sent by the respondent to the complainant was one-sided contract containing unilateral and arbitrary terms, being discriminatory and biased towards the respondent. It has also been stated by the complainant that despite specific assurances from the respondent at the time of booking that the terms of the agreement would be more balanced, the said agreement contained several clauses which were totally discriminatory and biased. It has also been stated by the complainant that objections and requests to such clauses of the agreement were raised by the complainant, however, the same was summarily rejected by the respondent. Nonetheless, even after observing that the agreement allegedly holds unilateral and invalid clauses, the complainant duly signed the agreement. Further the complainant even went ahead and alleged that the respondent refused to amend the changes and threatened the complainant to forfeit the amounts paid.
- iii. It is inconceivable as to why any person with a prudent mind would execute the agreement even after opining that the clauses contained in the agreement were arbitrary. Moreover, the complainant have also acted upon the agreement by paying the booking amount for the flat. The complainant is making vague allegations against the respondent with respect to the unilateral clauses in the agreement and respondent threatening the complainant with forfeiture of the amount paid for the reasons that complainant has nowhere in his complaint indicated and substantiated such allegations by way of producing relevant documents. It is submitted that the complainant has, out of his own free will and volition signed the agreement having full knowledge of the clauses. Pertinently,

the complainant has never raised any objections with respect to the one sidedness of the clauses of the agreement before filing the captioned complaint. It is submitted that the complainant has only signed the agreement after going through all the contents and clauses, therefore, the allegations made by the complainant are cooked up and imaginative.

- iv. That the complainant out of his own free will and volition approached the respondent, applied for and booked a unit bearing number C-504 on the 5th floor, Tower-T1 having super built up area of 1210 sq. ft. in the respondent's project "Ashiana Mulberry Phase-I" situated at Sector-02, Sohna, Gurgaon, Haryana .
- v. That the apartment buyer agreement dated 27.10.2015 was executed between the complainant and the respondent. The said agreement also contained a schedule b pertaining to payment plan, and the complainant was under an obligation to adhere to the said payment plan.
- vi. That the total sale consideration of the said unit was Rs.74,29,854/- towards the unit cost and Rs.2,45,790/- towards maintenance and other charges. The respondent has duly received Rs. 76,75,644/- including the maintenance and other charges.
- vii. That as per clause 11.2 of the said agreement, the respondent never promised to hand over the possession within a period of 39 months. In actuality, Clause 11.2 of the said agreement states that the respondent shall endeavor to complete the construction work of the unit within period of 39 months from date of the said Agreement, subject to application made for grant of occupation certificate and on receipt of the same shall offer possession of the said unit, which was in turn conditional upon the "force majeure".
- viii. That Clause 11.3 of the said agreement enumerates the "force majeure" clause which states that completion date shall automatically be deemed to be extended

if the delay in completion of construction of the project has occurred due to force majeure or circumstances beyond the control of the respondent company.

- ix. That the respondent submitted the application dated 05.04.2021 to the DTCP and even after the delay caused by the various allottees including the complainant 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.
- x. That the respondent has always kept the complainant updated with respect to the development of surrounding area as well as of construction of the project. The respondent further repetitively apprised the complainant of the factors which have a visible adverse impact on the real estate industry.
- xi. That the captioned complaint is an afterthought and has been filed with the ulterior motive to avoid the contractual obligation and earn wrongfully from the respondent.
- xii. That the dispute between the complainant and the respondent has already been resolved. The compensation demanded by the complainant at the time of possession had already been paid to them and the same has been confirmed and accepted by the complainant through his e-mail on 21.11.2022.
- xiii. Thereafter, intimation for possession hand over letter dated 30.01.2023 was sent to the complainant intimating the complainant to take possession of the said unit and parking allotment letter dated 30.01.2023 was sent to the complainant allotting the parking space bearing no. PB-248 at basement level as per the settlement.

- xiv. That after settling all the disputes and claims, the complainant took possession of the said unit on 05.02.2023 and a possession certificate was issued to the complainant which was duly signed by the complainant and the same records that the complainant has inspected the flat and the same is in order. Further, he has no claim against the respondent after the said date. The conveyance deed dated 22.03.2023 also stand registered in favour of the complainant.
- xv. That the captioned complaint is directly hit by the principle of "accord and satisfaction" which in legal term denotes a mutual agreement that discharges pre-existing obligations through a new contract that has been acted upon. In the present case, parties entered settlement which has already been confirmed and accepted by the Complainant through e-mail on 21.11.2022, thereby discharging the parties from their pre-existing obligations towards each other.
- xvi. That the jurisdiction of the Authority cannot be invoked as there is no cause of action which arose within the jurisdiction of the Authority.
- xvii. That the complainant has prayed for relief which otherwise has to be claimed in a suit for damages and recovery, after paying appropriate court fee. In order to avoid the payment of court fee, the complainant has raised a dispute of civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of the Authority. In this view of the matter, the complaint is liable to be dismissed with costs.
- xviii. That the dispute between the parties has already been settled as compensation was paid to the complainant during the handover of the possession as per the amicable settlement between the parties. Further, the possession certificate handed over during the possession which is duly signed by the complainant that there is no claim left against the respondent. In this view of the matter, the complaint is liable to be dismissed on this ground alone.

- xix. That 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.
- xx. That the complainant has filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the Respondent. Since the captioned complaint is filed without any cause of action, the same is liable to be dismissed at the outset. Hence, the complaint is liable to be dismissed.
12. All other averments made in the complaint were denied in toto.
13. 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.

14. 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

15. 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

16. 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.*

17. 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 relief sought by the complainants.

E.I Interest for every month of delay at prevailing rate of interest. from 27.01.2019 till 05.02.2023 i.e. the date of handing over of possession.

18. The factual matrix of the case reveals that the complainant was allotted unit no. C- 504, 5th floor admeasuring super built-up area of 1210 sq. ft., in the respondent's project at basic sale price of Rs. 69,33,250/-. A buyer's agreement was executed between the parties dated 27.10.2015. The complainant has paid a sum of Rs.74,06,254/- towards the subject unit.
19. The Authority has also considered the contention of the respondent that, pursuant to the email dated 21.11.2022, the complainant had agreed to settle the matter and had thereby relinquished his claim towards delay possession charges. On examination of the material placed on record, the Authority finds that no formal settlement agreement executed between the parties has been placed on record.

20. 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. The said provision casts a statutory obligation upon the promoter to pay interest for every month of delay at the prescribed rate and correspondingly creates a statutory entitlement in favour of the allottee. Such statutory entitlement cannot be defeated merely on the basis of an alleged correspondence between the parties, particularly when the material on record does not establish any concluded settlement having the effect of lawfully relinquishing such statutory right.
21. Accordingly, the email dated 21.11.2022 cannot be construed as a settlement agreement or as a valid waiver of the complainant's statutory entitlement to delay possession charges under Section 18(1) of the Act.
22. The complainant herein intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which 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."***

23. Clause 11.2 of apartment buyer's agreement dated 27.10.2015 provides for handing over of possession and is reproduced below:

"11.2

Shall endeavor to complete the construction work of the said apartment/building thereof within a period of 39 (Thirty Nine) months from the date of

this agreement or start of construction after grant of environment clearance whichever is later and a grace period of six months and shall thereafter apply for the grant of OC"

(Emphasis Supplied)

24. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. 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, *ibid*. 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."

25. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.

26. 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., 14.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

27. The definition of term 'interest' as defined under Section 2(z) 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;”*

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same as is being granted to them in case of delayed possession charges.
29. On consideration of the documents available on record and submissions made regarding contravention of 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.
30. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. 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 complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @ 10.80%p.a. w.e.f. 27.07.2019 till the offer of possession plus 2 months or actual handing over of possession whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

31. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

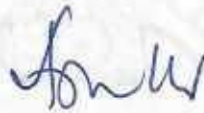
S.No.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant is entitled to delay period interest
1.	CR/1043/2026	27.07.2019 (inclusive of grace period of 6 months)	23.11.2022	w.e.f. 27.07.2019 till 23.11.2022 plus two months or actual handing over of possession whichever is earlier.
2.	CR/1018/2026	30.12.2019 (inclusive of grace period of 6 months)	14.02.2023	w.e.f. 30.12.2019 till 14.02.2023 plus two months or actual handing over of possession whichever is earlier.

G. 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):

- The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 27.07.2019 till offer of possession plus two months as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules. The due date of possession and the date of entitlement are detailed in table given in para 31 of this order. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date this order as per Rule 16(2) of the Rules.
- The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iii. 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
34. The complaints stand disposed of.
35. Files be consigned to registry.

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2026**HARERA**
GURUGRAM