

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

Order pronounced on: 09.09.2022

Name of the Builder		Apex Buildwell Private Limited	
Project Name		Our Homes	
S.n	Complaint No.	Complaint title	Attendance
1.	CR/3685/2021	Ashish Goutam V/s Apex Buildwell Private Limited	Mr. Vishal Mukherjee Mr. Siddharth Jain
2.	CR/3688/2021	Nidhi Arora & Ors. V/s Apex Buildwell Private Limited	Mr. Vishal Mukherjee Mr. Siddharth Jain
3.	CR/3715/2021	Shanti Devi & Ors. V/s Apex Buildwell Private Limited	Mr. Vishal Mukherjee Mr. Siddharth Jain
4.	CR/3720/2021	Naveen Dutt Sharma V/s Apex Buildwell Private Limited	Mr. Vishal Mukherjee Mr. Siddharth Jain
5.	CR/3760/2021	Lalit Kumar Atal V/s Apex Buildwell Private Limited	Mr. Vishal Mukherjee Mr. Siddharth Jain
6.	CR/3761/2021	Jasvinder Singh V/s Apex Buildwell Private Limited	Mr. Vishal Mukherjee Mr. Siddharth Jain
7.	CR/3793/2021	Vijender V/s Apex Buildwell Private Limited	Mr. Pradeep Kumar Khatana Mr. Siddharth Jain
8.	CR/3794/2021	Narender V/s Apex Buildwell Private Limited	Mr. Naresh Khatana Mr. Siddharth Jain

CORAM:

Dr. K.K. Khandelwal	Chairman
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of all the 8 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, Our Homes (Low cost group housing project) being developed by the same respondent/promoter i.e., Apex Buildwell Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue 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 delayed possession charges, possession and the execution of the conveyance deeds.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, conveyance deed, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Our Homes, Sector-37C, Gurugram

Possession clause: Clause 3(a)

That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment *within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans* and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.

Note:

1. Date of commencement of construction of the project- Date of commencement of construction is calculated from date of consent to establish and the same was obtained on 02.12.2013 from the competent authority. Therefore, date of commencement of construction comes out to be 02.12.2013.

2. Grace period- Since possession clause 3(a) 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 3(a) 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 3(a) of buyer's agreement, the due date of handing over of possession is 36 months from date of commencement of construction and as specified above, date of start of commencement is 02.12.2013. Therefore, due date of handing over of possession including 6 months of grace period comes out to be **02.06.2017**.

4. Occupation certificate- Details of occupation certificate obtained has been detailed as follows

A. 29.11.2019	B. 24.02.2020
For- Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers)	For- Type-1 (16 nos. towers) & Commercial

5. Conveyance deed- In case bearing serial no. 2, 5, 7 & 8 conveyance deed has already been executed.

Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/3685/2021 titled as Ashish Goutam V/s Apex Buildwell Private Limited DOR-16.09.2021	Reply received on 09.11.2021	442 on 4th floor, tower-Orchid admeasuring 48 sq. mtrs. (As per page no. 19 of complaint)	18.11.2013 (As per page no. 16 of complaint)	02.06.2017 Offer of possession-01.03.2020 (As per page no. 66 of the complaint)	TSC: Rs.16,00,000/- (As per demand letter dated 07.06.2014 on page no. 49 of the complaint) AP: Rs.16,00,000/ (As alleged by the complainant on page no. 11 of complaint and agreed by the respondent is para-wise reply on page no. 07 of reply)	1. DPC 2. Compensation



2.	CR/3688/ 2021 titled as Nidhi Arora & Atin Hans V/s Apex Buildwell Private Limited DOR- 16.09.2021	Reply received on 09.11.2021	A539 on 5th floor, tower- Lotus admeasuring 48 sq. mtrs. (As per page no. 23 of complaint)	12.01.2013 (As per page no. 20 of complaint)	02.06.2017 Offer of possession- 01.12.2019 (As per page no. 71 of the complaint)	TSC: Rs.16,00,000/- (As per demand letter dated 31.01.2013 on page no. 50 of the complaint) AP: Rs.16,00,000/- (As per conveyance deed dated 14.02.2020 on page no. 75 of complaint)	1. DPC 2. Compensation
3.	CR/3715/ 2021 titled as Shanti Devi & Pratap Singh V/s Apex Buildwell Private Limited DOR- 16.09.2021	Reply received on 09.11.2021	727 on 7th floor, tower- Rose admeasuring 48 sq. mtrs. (As per page no. 20 of complaint)	13.02.2013 (As per page no. 17 of complaint)	02.06.2017 Offer of possession- 01.12.2019 (As per page no. 26 of the reply)	TSC: Rs.16,00,000/- (As per demand letter dated 02.01.2014 on page no. 58 of the complaint) AP: Rs.16,00,000/- (As alleged by the complainants on page no. 11 of complaint and agreed by the respondent is para-wise reply on page no. 07 of reply)	1. DPC 2. Compensation
4.	CR/3720/ 2021 titled as Naveen Dutt Sharma V/s Apex Buildwell Private Limited DOR- 16.09.2021	Reply received on 09.11.2021	728 on 7th floor, tower- Rose admeasuring 48 sq. mtrs. (As per page no. 20 of complaint)	15.02.2013 (As per page no. 17 of complaint)	02.06.2017 Offer of possession- 30.11.2019 (As per page no. 61 of the complaint)	TSC: Rs.16,00,000/- (As per demand letter dated 02.01.2014 on page no. 20 of the complaint) AP: Rs.16,00,000/- (As alleged by the complainant on page no. 11 of complaint and agreed by the respondent is para-wise reply on page no. 07 of reply)	1. DPC 2. Compensation

5.	CR/3760/ 2021 titled as Lalit Kumar Atal V/s Apex Buildwell Private Limited DOR- 16.09.2021	Reply received on 09.11.2021	917 on 9th floor, tower- Jasmine admeasuring 48 sq. mtrs. (As per page no. 17 of complaint)	23.02.2013 (As per page no. 14 of complaint)	02.06.2017 Offer of possession- 01.12.2019 (As per page no. 26 of the reply)	TSC: Rs.16,00,000/- (As per page no. 17 of the complaint) AP: Rs.16,00,000/- (As per conveyance deed dated 06.08.2021 on page no. 57 of complaint)	1. DPC 2. Compensation
6.	CR/3761/ 2021 titled as Jasvinder Singh V/s Apex Buildwell Private Limited DOR- 16.09.2021	Reply received on 09.11.2021	697 on 6th floor, tower- Iris admeasuring 48 sq. mtrs. (As per page no. 17 of complaint)	08.03.2013 (As per page no. 14 of complaint)	02.06.2017 Offer of possession- 11.03.2020 (As per page no. 26 of the reply)	TSC: Rs.16,00,000/- (As per page no. 17 of the complaint) AP: Rs.16,00,000/- (As alleged by the complainants on page no. 03 of complaint and agreed by the respondent is para-wise reply on page no. 07 of reply)	1. DPC 2. Compensation
7.	CR/3793/ 2021 titled as Vijender V/s Apex Buildwell Private Limited DOR- 24.09.2021	Reply received on 10.12.2021	240 on 2nd floor tower Lotus admeasuring 48 sq. mtrs. (As per page no. 30 of complaint)	22.02.2013 (As per page no. 27 of complaint)	02.06.2017 Offer of possession- 01.12.2019 (As per page no. 27 of the reply)	TSC: Rs.16,00,000/- (As per page no. 30 of the complaint) AP: Rs.16,00,000/- (As per conveyance deed dated 28.06.2021 on page no. 28 of reply)	1. DPC 2. Compensation

8.	CR/3794/ 2021 titled as Narender V/s Apex Buildwell Private Limited DOR- 24.09.2021	Reply received on 10.12.2021	237 on 2nd floor tower- Lotus admeasuring 48 sq. mtrs. (As per page no. 29 of complaint)	22.02.2013 (As per page no. 26 of complaint)	02.06.2017 Offer of possession- 01.12.2019 (As per page no. 27 of the reply)	TSC: Rs.16,00,000/- (As per statement of accounts dated 09.04.2013 on page no. 67 of the complaint) AP: Rs.16,00,000/- (As per conveyance deed dated 14.06.2021 on page no. 28 of reply)	1. DPC 2. Compensation
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOR- Date of receiving complaint
SA- Subsequent allottee
TSC- Total Sale consideration
AP- Amount paid by the allottee(s)
DPC- Delayed possession charges
CTE- Consent to establish
CD- Conveyance deed

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of delayed possession charges and compensation.
- It has been decided to treat the said complaints 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.
- 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 3685/2021 titled as Ashish Goutam Vs. M/s Apex Buildwell Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges and execution of conveyance deeds.

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/3685/2021 titled as Ashish Goutam Vs. M/s Apex Buildwell Private Limited

S. No.	Heads	Information
1.	Name and location of the project	"Our Homes", Sector 37C, Gurugram
2.	Nature of the project	Low cost group housing project
3.	Area of the project	10.144 acres
4.	DTCP License	13 of 2012 dated 22.02.2012
	valid up to	01.12.2019
	Licensee name	M/s Prime IT Solution & M/s Phonix Datatech Service
5.	RERA registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019
	Valid up to	01.12.2019
6.	Allotment letter	Not provided on record
7.	Date of apartment buyer agreement	18.11.2013 (As per page no. 16 of the complaint)
8.	Unit no.	442 on 4 th floor, tower- Orchid (As per page no. 19 of the complaint)
9.	Super area admeasuring	48 sq. mtrs. (carpet area) (As per page no. 19 of the complaint)
10.	Possession clause	As per Clause 3(a) of agreement, <i>That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the</i>

		<p>apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment within a period of <u>36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc.</u> as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner. (Emphasis supplied)</p>
11.	Due date of delivery of possession	<p>02.06.2017</p> <p>(Calculated from the date of the commencement of construction i.e., 02.12.2013 + 6 months grace period) (Grace period of 6 months is allowed)</p>
12.	Payment plan	<p>Time linked payment plan (As per page no. 48 of complaint)</p>
13.	Total consideration	<p>Rs.16,00,000/-</p> <p>(As per demand letter dated 07.06.2014 on page no. 49 of the complaint)</p>
14.	Total amount paid by the complainants	<p>Rs.16,00,000/-</p>

		(As alleged by the complainant on page no. 11 of complaint and agreed by the respondent is para-wise reply on page no. 07 of reply)
15.	Occupation certificate	i. 19.5.2017 - Primary School ii. 29.11.2019 Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers) iii. 24.02.2020 Type-1 (16 nos. towers) & Commercial
16.	Date of offer of possession to the complainant	01.03.2020 (As per page no. 66 of the complaint)
17.	Conveyance deed dated	Not executed
18.	Delay in handing over possession till 01.05.2020 i.e. date of offer of possession (01.03.2020) + 2 months	2 years 10 months 29 days

B. Facts of the complaint

8. That the complainant after seeing advertisements of the respondent-builder herein, in the newspaper namely Times of India for launching the project namely "Our Homes" (hereinafter referred to as "the said project") situated at Village Garaui-Khurd, Sector 37C, Gurugram, Haryana, came into contact with the executives of the respondent, who embarked upon the complainant with their sales team with various promises of timely completion of project and swift delivery of possession on time.
9. That the complainant, trusting and believing completely the words, assurances and towering claims made by the respondent, fell into their trap and agreed to book a unit in the said project and paid an amount of Rs. 4,12,360/- on 01.11.2013 against booking of unit bearing no. 442 on the 4th floor of tower Orchid.
10. That a buyer's agreement was executed between the parties on 18.11.2013. Thereafter, from time to time further payments were made to the respondent by

the complainant as per the demand letters issued by it. As per clause 3(a) of the said agreement, the respondent agreed to handover possession of unit by within a period of 36 months with a grace period of 6 months from the date of commencement of construction of the complex.

11. That till date the complainant has paid a sum of Rs. 16, 00, 000/- and has time and again requested the respondent to provide the account statement of the said unit but it did not pay any heed to the said request.
12. That since the date of booking, he visited at so called proposed site at various instances and found that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
13. That he tried his level best to resolve the issue of the delayed possession, but it did not pay any heed to the said requests and on the contrary kept on asking for illegal demand of payment by adding delayed payment interest and other illegal charges like maintenance etc.
14. That the respondents by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard-earned money in their so-called upcoming project, with sole intention to cheat and cause wrongful loss to him. In this process it gained wrongfully, which is purely a criminal act. It has also played a fraud upon as HDFC was facilitating the loan amount in favour of the buyer and taking untimely payments without reaching the milestone of construction.
15. That as per the buyer's agreement, the respondent-builder was required to give the possession of the unit by 18.05.2017. However, after much delay and harassment, it gave the offer of possession on 01.03.2020.

16. That meanwhile he tried his level best to reach the representatives of respondent to seek a satisfactory reply with respect to delayed possession compensation as per the rules and provisions of the Act of 2016, but all in vain.
17. That since it had not delivered the possession of the apartment on time, of which the complainant is suffered economic loss as well as mental agony, pain and harassment by its act and conduct. Thus, he is entitled to a compensation. Furthermore, he was constrained by the act of the respondent to live in a rented accommodation and pay extra interest on his home loan. He requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

C. Relief sought by the complainants:

18. The complainant has sought following relief(s):
 - i. Direct the respondent to provide interest at the rate of 18% which is charged by the complainant in case of default as per rolling interest @18% p.a. for the delay which has to be calculated as and when the 36 months was completed and thereafter, the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente-lite.
 - ii. Direct the respondent to pay a sum of Rs. 30,000/- as cost of present litigation.
21. 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

22. The respondent has contested the complaint on the following grounds.

- a. That the respondent has been very well committed to the development of the real estate project and secured the occupation certificates for both of the phases of the project named "Our Homes" and the delay occasioned in delivering the possession of the project is only because of explainable and extendable as per the agreed terms, as per clause 3 of the apartment buyer's agreement and is due to causes beyond the control of the respondent and hence there is no violation under Section 18(1) of Act of 2016 as the project has been constructed and the time of delay is extendable as per the agreement between the parties.
- b. That the above noted case is a mere abuse of process of law wherein the complainant dishonestly on having been offered possession instead of making the due payments amounting to Rs. 5,58,569.22/- has ventured to file the present complaint for further wrongful gains by misusing the process of law.
- c. That on grant of license bearing no. 13/2012 dated 22.02.2012, it applied for all other relevant permissions and secured the BRIII for sanction of building plans on 7.05.2013 and the consent to establish by the office of Haryana State Pollution Control Board, Panchkula was only granted on 2.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016 the respondent had been seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana and finally the same was received on 26.04.2019. The respondent in a duty-bound manner completed the entire construction and development of the project & obtained the first occupation certificate on 29.11.2019 and the second occupation certificate on 24.02.2020 and thereupon, offered possession of the flat to the complainant in all its bona

fides on 01.03.2020 and the same was taken over by the complainant without any complainant.

- d. That the provisions of Act of 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13/2012 the same got dismissed vide orders dated 19.01.2018 and finally after regular follow ups and initial rejections the project has been registered vide registration no. 40 of 2019 dated 08.07.2019. The said fact even lead to further operational obstacles & restrictions of funds in completion of the project and leading to delay in completion of the project which were beyond the control of the respondents and was extendable as per the agreed terms.
- e. That the respondent-company tried extremely hard to avail all the approvals, permissions and sanctions from the relevant authorities and discharging the additional costs of renewal of license, plans and sanctions. Further, ban on construction activities imposed by the NGT from time to time and lastly in the months of October-November 2019 have further lead to delay in completion of the project which are per se beyond the control of the respondent.
- f. That if the period of pendency of the license is condoned and extended than the respondent has delivered the project well within the agreed period of completion and therefore, there is no cause of action in favour of the complainant to file the present complaint.
- g. That thereby, the delay being occasioned is beyond the control of the respondent i.e. firstly due to the grant of consent to establish and thereafter due to the lapse of license and the same is excusable as contemplated and agreed by the parties vide para 3(b) (i) & (ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months

plus 6 months grace period is extendable and the complainant is estopped from filing the present complaint.

- h. That the respondent has even applied to the Directorate of Town and Country Planning, Haryana for declaring the time taken in renewal of the license as a "Zero Period" vide representation dated 25.08.2021 and the same is still pending adjudication.
 - i. That it is the respondent who has been suffering due to the delay being occasioned and has to face extra charges, costs and expenses in getting all the above permissions renewed and in particular the renewal of license and the costs of registration under RERA. It is pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date is much more advanced than the amount received.
 - j. That the complainant is estopped to file the present complaint due to his own acts and conduct of accepting the possession along with non-monetary benefits including waiver of interest and other charges on possession as the complainant has not complied with the demands of the due amounts as made by the respondent at the time of offer of possession and instead is wrongfully filing the present complaint. It is pertinent to note that the entire obligations of completion of the project is upon the respondent and the failure to pay the due amounts in a timely manner by so many of the allottees including the complainants have led to multiple problems and extra costs on the respondent leading to further delays.
23. 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

24. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

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)(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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

So, in view of the provisions of the Act of 2016 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 the objections raised by the respondent:

F.I Objection regarding exclusion of the period of renewal of license while computing delay in handing over possession.

25. The respondent-builder contended that on grant of license bearing no. 13/2012 dated 22.02.2012, the respondent applied for all other relevant permissions and secured the BRIII for sanction of building plans only on 07.05.2013 and the Consent to Establish by the Office of Haryana State Pollution Control Board, Panchkula was only granted on 02.12.2013. Since then, the respondent continued the construction of the project, but the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016, the respondent had been seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana and finally the same was received on 26.04.2019.
26. The respondent is claiming that due to non-renewal of license by the competent authority, the promoter was not able to complete the project within the stipulated time and if it had the license be granted in time, the respondent would have duly completed the project within the permissible time period. The authority is of the considered view that if there is lapse on the part of any competent authority concerned in granting the renewal of license within reasonable time and that the respondent was not at fault in fulfilling the conditions of renewal of license then the respondent should approach the competent authority for getting this time period i.e. 21.02.2016 till 26.04.2019 be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

F.II Objection regarding delay due to force majeure circumstances.

27. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as orders passed by the National Green Tribunal during October-November 2019. But the plea taken by respondent is devoid of merit and hence, rejected. The authority is of considered view that as per clause 3(a) of apartment buyer's agreement dated 18.11.2013, the due date of handing over of possession is to be calculated as 36 months from date of commencement of construction with a grace period of 6 months. The date of commencement of construction is date on which consent to establish has been obtained from the competent authority i.e. 02.12.2013. The said grace period of 6 months is allowed to the respondent as specified in the table at serial no. 03 of this order. As the due date of handing over of possession come out to be 02.06.2017. The respondent was liable to complete the construction of the project and handover the possession of the said unit by 02.06.2017 and the respondent is claiming benefit of ban on construction by National green Tribunal laid in October-November 2019 whereas the due date of handing over of possession was much prior to the event. Therefore, the authority is of the view that ban on construction by NGT cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the such restriction, the said time period is not excluded while calculating the delay in handing over possession.

F.III Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges.

28. The authority observes that in some of the complaints, conveyance deed has already been executed inter-se parties. Details of same is briefed hereunder:-

<i>Details of whether the conveyance deed has been executed in particular case or not.</i>			
S.no	Complaint no.	Complaint title	Dated
1.	CR/3685/2021	Ashish Goutam V/s Apex Buildwell Private Limited	-
2.	CR/3688/2021	Nidhi Arora & Ors. V/s Apex Buildwell Private Limited	✓ 14.02.2020 (As per page no. 76 of complaint)
3.	CR/3715/2021	Shanti Devi & Ors. V/s Apex Buildwell Private Limited	-
4.	CR/3720/2021	Naveen Dutt Sharma V/s Apex Buildwell Private Limited	-
5.	CR/3760/2021	Lalit Kumar Atal V/s Apex Buildwell Private Limited	✓ 06.08.2021 (As per page no. 62 of complaint)
6.	CR/3761/2021	Jasvinder Singh V/s Apex Buildwell Private Limited	-
7.	CR/3793/2021	Vijender V/s Apex Buildwell Private Limited	✓ 28.06.2021 (As per page no. 29 of reply)
8.	CR/3794/2021	Narender V/s Apex Buildwell Private Limited	✓ 14.06.2021 (As per page no. 31 of reply)

29. The respondent submitted that the complainant has executed a conveyance deed and therefore, the transaction between the complainant and the respondent has been concluded and no right or liability can be asserted by the complainant

against the respondent. The present complaint is nothing but a gross misuse of process of law.

30. The authority is of the view that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit where right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

31. This view is affirmed by the Hon'ble NCDRC in case titled as ***Vivek Maheshwari V. Emaar MGF Land Ltd. (Consumer case no. 1039 of 2016 dated 26.04.2019)***

wherein it was observed as under:

"7. *It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed hand over letter and the Sale Deed has also been got executed by them in their favour.*

8. *..... The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants......"*

(emphasis supplied)

32. From above it can be said that the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, the complainant never gave up his statutory right to seek delayed possession

charges as per the provisions of the said Act. The allottees have invested their hard-earned money which there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. The obligation of the developer – promoter does not end with the execution of a conveyance deed. Also, the same view has been upheld by the hon'ble Supreme Court in case titled as *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. V. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil Appeal No. 6239 of 2019) dated 24.08.2020*, the relevant paras are reproduced herein below:

- “34 *The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchaser's possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.*
35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an*

absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

33. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges as per provisions of the Act from the respondent-promoter

G. Findings on the relief sought by the complainant:

34. The common delayed possession charges & compensation are involved in all these cases.

G.1 Direct the respondent to provide interest at the rate of 18% which is charged by the complainant in case of default as per rolling interest @18% p.a. for the delay which has to be calculated as and when the 36 months was completed and thereafter, the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente-lite.

35. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of 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."

36. The apartment buyer's agreement was executed between the parties. As per clause 3(a) of the allotment letter, the possession was to be handed over within

36 months from the date commencement of construction along with a grace period of 6 months. The clause 3(a) of the buyer's agreement is reproduced below:

3(a) Offer of possession

That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.. (Emphasis supplied)

37. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its

meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

38. **Admissibility of grace period:** As per clause 3(a) of buyer's agreement dated 18.11.2013, the respondent promoter has proposed to handover the possession the said unit within a period of 36 months from date of commencement of construction along with grace period of 6 months. The said possession clause incorporates unqualified reason for grace period/extended period of 6 months. Accordingly, the authority literally interpreting the same and allows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 3(a) of buyer's agreement is allowed and included while calculating the due date of handing over of possession
39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

40. 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., 09.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

41. 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;"*

42. 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. By virtue of clause 3(a) of the buyer's agreement executed between the parties, the possession of the subject

apartment was to be delivered within a period of 36 months plus 6 months from date of commencement of construction. Date of commencement is considered from date to consent to establish i.e. 02.12.2013. As such the due date of handing over of possession comes out to be 02.06.2017 in all the cases as detailed in para no. 03 of order.

43. 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 these complaints, the occupation certificates were granted by the competent authority on 29.11.2019 and on 24.02.2020. The respondent has offered the possession of the subject unit(s) to the respective complainants after obtaining occupation certificate from competent authority, 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. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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. In the *case bearing no. Cr/3685/2021 titled as Ashish Goutam V/s Apex Buildwell Private Limited*, the possession was offered on 01.03.2020 after receiving occupation certificate. It is further clarified that the delay possession charges shall be payable from the due date of possession

i.e. 02.06.2017 till the expiry of 2 months from the date of offer of possession (01.03.2020) which comes out to be 01.05.2020.

44. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment 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 proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e. 02.06.2017 till offer of possession plus two months (i.e. 01.05.2020), at the prescribed rate i.e., 10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

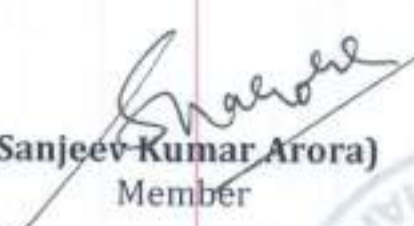
G.II Direct the respondent to pay a sum of Rs. 30,000/- as cost of present litigation.

45. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before

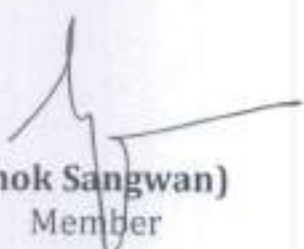
Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

46. 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 promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession till offer of possession plus 2 months as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - iii. The respondent is directed to fulfil all the contractual obligations conferred upon him vide buyer's agreement.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - 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% 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.

47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
48. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decrees in individual cases.
49. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Dr. K.K. Khandelwal)
Chairman


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.09.2022

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