



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

Complaint no. : 1306 of 2018
Complaint filed on : 22.10.2018
Order reserved on : 15.03.2023
Order pronounced on : 02.05.2023

1. Mr. Damaninder Singh Jaijee
 2. Ms. Inderpreet Kaur Jaijee
- Both RR/o: 552, New Millineium Apartments, Sector-23, Dwarka, New Delhi

Complainants

Versus

M/s Raheja Developers Limited.
Regd. Office at: - 215-216, 2nd Floor, Rectengale-1, D-4, District Center Saket, New Delhi - 110017

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE WHEN ARGUED:

Shri Asahish Budhiraja
Shri Garvit Gupta

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se them.



A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name of the project	"Raheja Vedaanta", Sector 108, Gurugram,
2.	Project area	10.668 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	204 of 2007 dated 11.08.2007 valid till 10.08.2017
5.	Name of licensee	Pinne Industrial Consultants Pvt. Ltd.
6.	RERA Registered/ not registered	Not registered
7.	Unit No.	IF17-01, ground floor, block/tower 17
8.	Unit area admeasuring	2175 sq. ft.
9.	Date of execution of agreement to sell	22.10.2011
10.	Allotment letter	21.10.2011



11.	Possession clause	<p>4.2 Possession Time and Compensation</p> <p><i>"That the seller endeavor to give possession of the apartment to the Purchaser within thirty-Six (36) months from the date of the execution of this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure condition or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the seller shall be entitled for compensation free grace period of six (6) months, in case the construction is not completed within the time framed mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Apartment to the Purchaser for his/her occupation and use and subject to the Purchaser having complied with all the terms and condition of this</i></p>
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		<i>Flat Buyer Agreement....."</i>
12.	Grace period	Allowed As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by October 2014. As per agreement to sell, the construction of the project is to be completed by October 2014 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.
13.	Due date of possession	22.04.2015 (Note: - 36 months from date of agreement i.e., 22.10.2011 + 6 months grace period)
14.	Total sale consideration	Rs.1,22,29,118/- (As per payment plan annexed in the agreement to sell)
15	Total sale consideration	Rs.1,26,03,013/-



		(As per applicant ledger dated 25.03.2014 annexed in the complaint)
16.	Amount paid by the complainants	Rs.1,12,26,791/- (As per applicant ledger dated 25.03.2014 annexed in the complaint)
17.	Occupation certificate /Completion certificate	Not annexed
18.	Offer of possession	Not annexed
19.	Delay in handing over the possession till date of this order i.e., 02.05.2023	8 years and 10 days

B. Facts of the complaint

3. The complainants have made following submissions in the complaint:
- That, the complainants had booked a unit bearing no. IF 17-01, in project of the respondent/promoter i.e., "The Vedanta Floors", Gurugram, 122004. Both the parties had entered into a builder buyer's agreement. The total sale consideration of the above mentioned was Rs.1,06,15,568/- and out of which the complainants had paid Rs.10,90,000/- at the time of booking the above-mentioned unit.
 - That, the complainants for the said unit had taken a loan for Rs.1,00,00,000/- from PNB bank against which they were paying an EMI of Rs.81,015/- till February 2018 and the said home loan



was later shifted to HDFC Bank in 2018 for Rs.80,00,000/- against which they are paying an EMI of Rs.52,572/- per month for the said unit.

- iii. That the respondent had agreed to complete the said project within three years from the date of execution of agreement to sell dated 22.10.2011 by 22.10.2014. As per agreement under the clause stating i.e., home loan linked payment plan, the complainants were not supposed to pay pre-EMI interest till possession of the unit to the loan provider.
- iv. That the complainants relying & under the belief of the builder's brand name and the promises made at the time of booking the unit and out of sheer enthusiasm of owning a housing unit at a prime location kept on making all the required payments whenever they were payable without any delay on their part which was also appreciated by the builder time and again. The complainants had taken a large sum of loan from the bank for the housing project against which they have been paying the monthly installments without having possession till today.
- v. That the housing project in which the complainants had invested the amount of hard-earned earnings has not been delivered to them in time and there is delay of about 8 years in total. As a right provided to a consumer under the domain of different statutes of law, the complainants visited the builder's office several times,



send it endless reminders telephonically and also via several emails inquiring about the reason of the delay in the completion of the project. But to the utter shock and dismay of the complainants neither of the queries of their were ever entertained and no conclusive and satisfactory reply ever came from the builder's end to which it was duly bound to provide.

- vi. That being the active party to the contract dated 22.10.2011 entered by the builder with the complainants, the former was duty bound to provide the housing unit along with the basement for car parking. The complainants had entered into the contract after it was expressly and impliedly promised by the builder that the housing unit would consist of the basement for car parking. Moreover, the same fact has been part of the contract from starting from the beginning and admitted additionally in several construction intimations along with the images of the housing unit No IF 17-01, send from the builders office wherein the images there of housing unit along with the basement parking construction intimations.
- vii. That when the complainant after receiving the intimation for possession in 2017 visited the builder's site of construction, and were deeply shocked and traumatized to notice that the basement for car parking was never built up in their housing unit whereas the same has been provided to all the housing units of other buyers



who not only entered into the same contract with the builder as the complainants had but also had paid the same amount in the year 2014.

- viii. That the complainants feeling cheated and suffering irreparable loss from the deception and fraudulent practice from the respondent approached the builder's office several times but to the utter shock, the respondent failed to provide any satisfactory reply to the complaints demand.
- ix. That the respondent/promoter verbally and documentary explained to the complainants the sale consideration of Rs.1,06,15,568/- was the absolute amount inclusive of everything. The complainants were required to pay for the possession of the said unit for which they ended up paying of Rs.1,13,43,947/-.
- x. That the complainants have till today performed them part of the agreement in its entirety and would perform, without any delay apart from suffering mental agony and harassment at several occasions in the form of paying huge amount of hard earned money amounting to crores and not having the possession of the unit till today, not getting any satisfactory and conclusive response to any of the legitimate queries from the builder and paying huge interest to the bank for the delay and deceit caused at the builders hand.
- xi. That the complainant tried to contact the builder several time physically, telephonically and by several e-mails so as to seek



information regarding the basement parking. In spite of several reminders by the complainant arbitrarily not only declined all the requests of providing the information regarding the basement parking but also threatened them that their allotment would be cancelled. Further, the complainant till date have not received any explanation regarding the basement parking in the said unit and the builder has been constantly threatening them for cancelling them allotment.

- xii. That the complainants under the ambit of double sword by the builder are not only being deprived of the possession of the allotted unit for which they paid a huge amount and also huge amount towards the home loan. Under this situation the complainants are left in no man's land as on one hand, they are still not allotted the unit and also continuing to pay the installments on loan amount.
- xiii. That due to this omission on the part of the respondent the complainants have been suffering from disruption on their working arrangement, mental torture, and agony and also continue to incur severe financial losses. This could have been avoided if the respondent had given possession of the apartment along with car parking on time.
- xiv. That the complainants have made all the payments due to the respondent on time and abided by the terms of the agreement whereas it in gross violation of the terms of the agreement has not



fulfilled its obligations and is liable to be penalized as per law with heavy penalties. The respondent has failed to justify its actions and has been delaying the matter on one pretext or another and is trying to avoid payment of delayed possession charges.

- xv. That the respondent company has utilized the deposited amount of complainants for sufficient time and now it is liable to pay delayed possession charges @ 18% per annum. The complainants have also suffered mental tension and harassment due to callous attitude of respondent for which they reserve right to claim Rs.10,00,000/- from the respondent before the appropriate authority.

C. Relief sought by the complainants

4. The complainants have sought the following relief:
- i. Direct the respondent to handover the peaceful physical possession of the apartment bearing no. IF17-01, the Vedaanta floors, Gurugram.
 - ii. Delayed possession charges 18% per annum (compoundable) from the date of each payment.
 - iii. Direct the respondent to refund the amount of Rs.6,00,000/- taken in lieu of the car parking not built in the footprint of the apartment.
 - iv. Direct the respondent to refund the excess amount deposited by the complainant along with interest.



- v. Direct the respondent not to charge holding charges and the maintenance from the complainant till the actual handover the possession of the unit.
 - vi. Direct the respondent to execute the conveyance deed for the said unit.
 - vii. That the cost of present litigation amounting to Rs.1,00,000/- along with cost of the complainant may kindly be awarded there in favour.
5. The respondent/promoter put in appearance through company's A.R & Advocate and who marked attendance on 04.10.2022, 14.12.2022, and 15.02.2023 respectively. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. So, in view of order dated 15.03.2023, it was observed by the authority that *"the conduct of the respondent makes it amply clear that the respondent does not wish to submit a reply or response to the compliant. In view of the above, defence of the respondent was struck off."*
6. 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 those undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority



7. 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

8. 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

9. Section 11(4)(a) of the Act 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

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(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.



10. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the reliefs sought by the complainants

- E.I Direct the respondent to handover the peaceful physical possession of the apartment bearing no. IF17-01, the Vedaanta floors, Gurugram.**
- E.II Delayed possession charges 18% per annum (compoundable) from the date of each.**
- E.III. Direct the respondent to refund the excess amount deposited by the complainants along with interest.**
11. Though while filing the complaint, the complainants did not took a plea w.r.t cancellation of the allotted unit vide letter dated 13.03.2012 issued by the respondent but after that the later received various payments from the allottees right from 22.09.2012 to 07.02.2014. Thus, it shows that the letter of cancellation of the unit was nothing more than a paper transaction and the same was never acted upon by the respondent. So, it also shows that the respondent in fact never cancelled the allotment of the unit in favour of the complainants and the same remained intact in their favour and a such they are entitled to the relief here in after referred as under.
12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the

proviso to section 18(1) of the Act. Proviso to section 18(1) 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."

13. Clause 4.2 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"4.2 Possession Time and Compensation

*"That the seller endeavor to give possession of the apartment to the Purchaser **within thirty-Six (36) months from the date of the execution of this Agreement** and after providing necessary infrastructure in the sector by the Government, but subject to force majeure condition or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. **However, the seller shall be entitled for compensation free grace period of six (6) months, in case the construction is not completed within the time framed mentioned above.** The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Apartment to the Purchaser for his/her occupation and use and subject to the Purchaser having complied with all the terms and condition of this Flat Buyer Agreement....."*

14. 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 are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee 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 allottee is left with no option but to sign on the dotted lines.

15. **Due date of possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by October 2014. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.



16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18%. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, she 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.

17. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Taking the case from another angle, the complainant/allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every



succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved persons, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

19. 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., 02.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
20. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
22. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement executed between the parties on 22.10.2011, the possession of the subject apartment was to be delivered within 36 months from the date of agreement to sell which comes out to be 22.10.2014. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of



handing over possession was 22.04.2015. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement to sell dated 22.10.2011 executed between the parties. Further there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 22.04.2015 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

E. IV. Direct the respondent to refund the amount of Rs.6,00,000/- taken in lieu of the car parking not built in the footprint of the apartment.



24. As per clause 3.3 of the flat buyer's agreement, the respondent/builder agreed to reserve car parking on payment of additional sum for their exclusive use and the payment plan as annexure-A, shows that amount as Rs.6,00,000/- and the same having been paid as evident from statement of account dated 25.03.2014 wherein against total sale consideration of Rs.1,26,03,013/-, the complainants paid a sum of Rs.1,12,26,791/-. Though as per the payment plan mentioned in annexure A, a part of the sale consideration is to be paid at the time of applying of occupation/occupation certificate but it is evident that the allottees have already paid the amount against the car parking slot. Though it is their version that the respondent has not provided ant car parking for their exclusive use but neither OC of the project has been received nor offer of possession of the allotted unit has been made to them. So, in the absence of those documents it can't be said that the respondent failed to provide car parking slot to the complainants as agreed by it while executing flat buyer's agreement on 22.10.2011. so, no relief under this issue can be allowed to the allottees.

E.V. Direct the respondent not to charge holding charges and the maintenance from the complainants till the actual handover the possession of the unit.

25. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees

even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year

E.VI. Direct the respondent to execute the conveyance deed for the said unit.

26. The respondent is directed to make a valid offer of possession and handover physical possession of the allotted unit to the complainants after obtaining occupation certificate from the competent authority. Further, as per clause 11 of unit buyer's agreement provides for 'conveyance of the plot' and is reproduced below:

Clause 11. CONVEYANCE DEED:

11.1 Stamp Duty and Registration Charges

"Stamp Duty and Registration Charges The stamp duty, registration fee/charges and other expenses to be incurred at the time of execution of the Conveyance Deed in pursuance to this Agreement to Sell shall be borne by the Purchaser.

11.2 Prior Intimation

The Purchaser can sell, assign, transfer, lease or part, with possession of the Premises but with prior intimation to the Seller. In such an event, except sale, it shall be the responsibility of the Purchaser to continue to pay the charges including maintenance and electricity etc. pertaining to the Premises payable under this Agreement to the Seller. The Purchaser undertakes that he shall not divide/sub-divide the Premises, except the partitions, additions, and alterations as provided in the Agreement to Sell. It is further agreed by the Purchaser that he shall make sure that in the event the Premises is transferred/sold or the Purchaser gives temporary possession to any third party, such person shall from time to time, sign all applications, papers and documents and do all the acts, deeds, which the Seller deems necessary for safeguarding the Premises.

11.3 Execution of Conveyance Deed





That the parties shall undertake to execute the Conveyance Deed within sixty (60) days from the date of intimation in writing by the Seller to the Purchaser about the receipt of the certificate for use and occupation of the said complex from the competent authority and after filing of the declaration deed, subject to the payment by the Purchaser to the Seller the Sale consideration and all other dues in terms of the payment plan.

In case of the Purchaser who has opted for long term payment plan arrangement with any Financial Institutions/Banks, the conveyance of the Apartment in favour of the Purchaser shall be executed only upon the Seller receiving No Objection Certificate from such Financial Institutions / Banks and the Deed of Conveyance will be deposited with the financial institutions as per the terms and conditions as agreed between the parties."

27. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be



carried out by the promoter within three months from date of issue of occupancy certificate.

28. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining occupation certificate from the competent authority. On successful procurement of it, a valid offer of possession be made to the complainants and execute the conveyance deed within 3 months from the date of obtaining the occupation certificate.

E.VII. That the cost of present litigation amounting to Rs.1,00,000/- along with cost of the complainant may kindly be awarded in favour of the complainant and against the respondent.

29. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled for claiming compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are at liberty to approach the adjudicating officer for seeking compensation.

F. Directions of the authority

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



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

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 22.04.2015 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- v. The arrears of such interest accrued from 22.04.2015 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to



- the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. The respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
- viii. The respondent shall execute the conveyance deed within 3 months after obtaining the occupation certificate from the concerned department.
- ix. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement. The respondent is not entitled to claim any holding charges from the complainant /allottees at any point of time even after being part of flat buyer's




HARERA
GURUGRAM

Complaint No. 1306 of 2018

agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

31. Complaint stands disposed of.
32. File be consigned to registry.

Dated: 02.05.2023


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM