

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

Date of decision: 18.05.2023

NAME OF THE BUILDER		M/S IMPERIA STRUCTURE LIMITED	
PROJECT NAME		THE ESFERA	
S. No.	Case No.	Case title	Appearance
1	CR/4785/2021	Regina Ranjani Devi Gupta and Sunil Gupta V/S M/s Imperia Structures Limited	Ms. Nisha Bhalla Ms. Antra Mishra
2	CR/4786/2021	Sunil Gupta and Regina Ranjani Devi Gupta V/S M/s Imperia Structures Limited	Ms. Nisha Bhalla Ms. Antra Mishra

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, The Esfera situated at Sector-37-C, Gurugram being developed by



the same respondent/promoter i.e., M/s Imperia Structures Limited. The terms and conditions of the 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 possession of the unit along with delayed possession charges.

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

Project Name and Location	"The Esfera" at sector 37C, Gurgaon, Haryana.
Project area DTCP License No. Name of Licensee	17 acres 64 of 2011 dated 06.07.2011 valid upto 15.07.2017 M/s Phonix Datatech Services Pvt. Ltd. and 4 others
RERA Registration	Registered vide no. 352 of 2017 issued on 17.11.2017 upto 31.12.2020
Possession Clause: 10.1. SCHEDULE FOR POSSESSION <i>"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement."</i>	
Due date of possession: 29.12.2016 (Calculated from the date of agreement) Note: Grace Period is not allowed.	
Occupation Certificate: Not obtained	



Sr. No	Complaint No., Case Title, and Date of filing of complaint	Date of apartment buyer agreement	Unit No.	Unit admeasuring	Due date of Possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/4785/2021 Regina Ranjani Devi Gupta and Sunil Gupta V/S M/s Imperia Structures Limited DOF: 13.12.2021 Reply Status: 18.05.2022	29.06.2013	803, 8 th floor, Block B (page no. 29 of the complaint)	2400 sq. ft.	29.12.2016	TSC: - Rs. 1,01,37,200/- AP: - Rs. 99,64,535/-	DPC. Possession
2.	CR/4786/2021 Sunil Gupta and Regina Ranjani Devi Gupta V/S M/s Imperia Structures Limited DOF: 13.12.2021 Reply Status: 18.05.2022	29.06.2013	401, 4 th floor, Block B (page no. 30 of the complaint)	2400 sq. ft.	29.12.2016	TSC: - Rs. 1,03,05,200/- AP: Rs. 1,01,53,849/-	DPC Possession

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

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

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4. 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 in respect of said units for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges.
 5. 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.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/4785/2021 Regina Ranjani Devi Gupta and Sunil Gupta V/S M/s Imperia Structures Limited** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges.
- A. Project and unit related details**

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

**CR/4785/2021 Regina Ranjani Devi Gupta and Sunil Gupta V/S M/s
Imperia Structures Limited**

S. N.	Particulars	Details
1.	Name of the project	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana



2.	Nature of the project	Group Housing Complex
3.	Project area	17 acres
4.	DTCP license no. and validity status	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
5.	Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
6.	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
8.	Unit no.	803, 8 th Floor, Block B (page no. 29 of complaint)
9.	Unit area admeasuring	2400 sq. ft. (page no. 29 of complaint)
10.	Date of builder buyer agreement	29.06.2013 [page no. 27 of complaint]
11.	Due date of possession	29.12.2016 [calculated from the date of agreement] Note: Grace Period is not allowed.
12.	Possession clause	10.1. SCHEDULE FOR POSSESSION “The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of



		allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement.”
13.	Total sale consideration	Rs. 1,01,37,200/- [as per statement of account on page no. 45 of reply]
14.	Amount paid by the complainants	Rs. 99,64,535/- [as per statement of account on page no. 45 of reply]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

The complainants have made the following submissions in the complaint: -

17. That the complainants are law-abiding Overseas Citizens of India (OCI) and are presently residing in California (United States). They have authorized Mr. Vikas Mohan Gupta as their legal representative vide special power of attorney dated 24.09.2021 to file and pursue the present complaint against the respondent company on their behalf.
18. That during the year 2010-2012, Respondent was marketing its project scheme of offering residential units of various sizes, etc. in Gurgaon in the name of “The ESFERA” at Sector 37-C, Gurgaon, Haryana.



19. That believing upon the presentation, assurances, and promises of the respondent, they booked a unit admeasuring 2400 sq. feet onthe 8th floor tower/block "B" along with a parking space for a total consideration price of Rs. 1,01,37,200/-.
20. That sum of Rs. 31,87,011/- was paid towards allotment and booking charges of the unit on 06.02.2012. Thereafter, the builder buyer agreement was executed on 29.06.2013 between the parties.
21. That as on date the complainants has paid a total amount of Rs. 99,38,043/- along with delay charges to the respondent towards complete satisfaction as promised payments but on utter dismay, the complainants was trapped and webbed into the malafide intention and motives of the respondent. The complaint is being cheated by the respondent since 2012 as to date no possession has been granted.
22. That as per the terms and conditions of the builder buyer agreement, it was categorically mentioned that the respondent shall deliver the possession of the above-mentioned units within 3 years along with a grace period of 6 months from the date of execution of the builder buyer agreement. and in case the respondent fails to deliver possession in the stipulated period, the respondent shall be liable to refund the amount along with simple interest of 9% p.a. Moreover, in case the respondent delay in delivery of the possession shall be liable to pay compensation @ Rs.5/- per sq. ft. to them from the date of expiry of 3 years and 6 months.
23. That after being heavily duped by the respondent and its representatives the complainants herein, approaching before this hon'ble forum to take stringent action against the perpetrators of the aforesaid crime of mass cheating, thug, fraud, forgery, looting innocent people and usurp crores of

rupees of public money under the grab of false assurances for handing over the possession of the above residential unit.

C. Relief sought by the complainants: -

24. The complainants have sought following relief(s):

- I. Direct the respondent to deliver the possession of the unit/apartment as per the quality and standards promised under the builder buyer agreement.
- II. Direct the respondent to pay interest @ 24 % p.a. on the principal amount from the date of payment till the date of possession.
- III. Direct the respondent to pay compensation for the delay @ Rs. 5/- per sq. ft. month starting from 1st July 2016 till the date of possession.
- IV. Direct the respondent to pay a sum of Rs. 1,00,000/- towards cost of litigation.

25. 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

The respondent has contested the complaint on the following grounds.

26. That the flat no. B-803 in situated in the said project had been allotted to the complainants by the respondent vide allotment letter dated 19.03.2012 on the terms and condition mutually agreed by the allottee and the respondent.

27. That the respondent company had intended to complete the construction of the said flat on time. The respondent company had successfully completed the construction of the said tower and produced the occupancy certificate for three towers out of 9 towers in the said project. However,



the construction of all the towers is completed and in habitable stage, in fact that the respondent company had already applied for grant of occupation certificate for the rest of towers of project including the Tower B where the allotted unit situates. The respondent company already intimated the complainants about the factum of its OC application before DGTCP, Haryana though due to certain force majeure circumstance majorly outbreak of second COVID wave in April 2021 and subsequent lockdown in Haryana State, the DGTCP, Haryana could not issue the OC well in time enabling the respondent to offer the physical possession of the allotted unit to the complainants. The allotted unit is ready for fit out possession, and communication with regard to this aspect have already been sent to all eligible allottees including the complainants herein. The project "ESFERA" comprises of 2 phases whereas OC of the phase I of the project is duly issued by "Town and Country Planning Development Haryana" on 07.02.2018 and more than 150 happy allottee(s) are residing in that phase. The physical possession of the unit will be tentatively delivered to its respective allottee(s) soon with respective OC on the said project.

28. That, the respondent company is in extreme liquidity crunch at this critical juncture, the company has also been saddled with orders of refund in relation to around 20-25 apartments in the project, on account of orders passed by various other courts. The total amount payable in terms of these decrees exceeds an amount of Rs.20 Crores. The said project involving hundreds of allottees, who are eagerly awaiting the possession of their apartments, will be prejudiced beyond repair in case any monetary order be passed when the project is almost completed now.



29. That, on account of many allottees exiting the project and many other allottees not paying their installment amounts, the company, with great difficulty, in these turbulent times has managed to secure a last^t mile funding of Rs.99 crores from SWAMIH Investment Fund - I. The said Alternate Investment Fund (AIF) was established under the Special Window declared on 6.11.2019 by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brownfield, RERA registered residential developments that are in the affordable housing /mid-income category, are net-worth positive and require last mile funding to complete construction. The company was granted a sanction on 23.09.2020 after examination of the status of the company and its subject project "Esfera" for the amount of Rs.99 crores. The first transaction of installment has already been received by the respondent company from the said fund as Loan.
30. That, it is humbly submitted that the authority may be pleased to consider the bona fide of the respondent company and distinguish the respondent company from the bad repute being imparted to real-estate builders. The respondent company is extremely committed to complete the phase - 2 of project Esfera, in fact the super structure of all towers in phase - 2 (incl. Tower - B) has already been completed, the internal finishing work and ME works is going in a full swing with almost 450 construction labourers are working hard to achieve the intent of the Appellant to complete the entire project despite all prevailing adversaries.
31. That, it is relevant to mention herein that several allottees have withhold the remaining payments, which is further severally affecting the financial health of the respondent company and further due to the force majeure conditions and circumstances/reasons, which were beyond the control of



the respondent company as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e. the complainants as well as the respondent company had contemplated at the very initial stage while signing the allotment letter/agreement that some delay might have occurred in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainants that the respondent company shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It is agreed between the complainants and the respondent that the respondent company is entitled to extension of time for delivery of the said flat on account of force majeure circumstances beyond the control of the respondent company and inter-alia, some of them are mentioned herein below:

- That, the respondent company started construction over the said project land after obtaining all necessary sanctions/approvals/clearances from different state/central agencies/authorities and after getting building plan approved from the authority and named the project as "Esfera II. The respondent company had received applications for booking of apartments in the said project by various customers and on their requests, the respondent company allotted the under-construction apartments/units to them.
- That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from November 4, 2019, onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time



was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14 February, 2020.

- That, when the complete ban was lifted on 14 February, 2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24th of March, 2020 due to pandemic COVID-19, and conditionally unlocked it in 3rd May, 2020. However, this has left the great impact on the Procurement of material and Labour. The 40-day lockdown in effect since March 24, which was further extended up to May 3 and subsequently to May 17, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods has left great impact and scars on the sector for resuming the fast pace construction for achieving the timely delivery as agreed under the "allotment letter.
- That initially, after obtaining the requisite sanctions and approvals from the concerned authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was halted and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without



there being any progress in the construction work. Further, most of the construction material which was purchased in advance got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting into losses to the respondent company running into crores of rupees.

- Moreover, every year the construction work was stopped / banned / stayed due to serious air pollution during winter session by the Hon'ble National Green Tribunal (NGT), and after banned / stayed the material, manpower and flow of the work has been disturbed / distressed. Every year the respondent company had to manage and rearrange for the same and it almost multiplied the time of banned / stayed period to achieve the previous workflow.
- The real estate sector so far has remain the worst hit by the demonetization as most of the transactions that take place happen via cash. The sudden ban on Rs 500 and Rs 1000 currency notes has resulted in a situation of limited or no cash in the market to be parked in real estate assets. This has subsequently translated into an abrupt fall in housing demand across all budget categories. Owing to its uniqueness as an economic event, demonetisation brought a lot of confusion, uncertainty - and, most of all, especially when it came to the realty sector. No doubt, everyone was affected by this radical measure, and initially all possible economic activities slowed down to a large extent, which also affected the respondent company to a great extent, be it daily wage disbursement to procuring funds for daily construction, and day-to-day activities, since construction

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involves a lot of cash payment/transactions at site for several activities.

- That there is extreme shortage of water in State of Haryana and the construction was directly affected by the shortage of water. Further the Hon'ble Puniab and Haryana High Court vide an Order dated 16.07.2012 in CWP No. 20032 of 2009 directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurgaon District, it was becoming difficult to timely schedule the construction activities. The availability of treated water to be used at construction site was thus very limited and against the total requirement of water, only 10-15% of required quantity was available at construction sites.

32. That, owing to the above said force majeure circumstances and reasons beyond the control of the respondent company, it was extremely necessary to extend the intended date of offer of possession mentioned in the allotment letter.

33. 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

34. 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

35. 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

36. 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.

37. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance



of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F.I Objection regarding force majeure conditions:

38. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court, demonetisation, govt. schemes and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 29.12.2016. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants

- 1A
- I. Direct the respondent to deliver the possession of the unit/apartment as per the quality and standards promised under the builder buyer agreement.
 - II. Direct the respondent to pay interest @ 24 % p.a. on the principal amount from the date of payment till the date of possession.



39. 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. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

40. Clause 10.1 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

10.1. SCHEDULE FOR POSSESSION

*"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the **construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement** unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement."*

41. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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. 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.

42. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
43. 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., 18.05.2023 is 8.70% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% per annum.
44. 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;"

45. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
46. On consideration of the circumstances, the evidence and other record and submissions made by the parties, 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. It is a matter of fact that builder buyer's agreement executed between the parties on 29.06.2013, the possession of the booked unit was to be delivered within a period of 3 and half years from the date of execution of the agreement, which comes out to be 29.12.2016. If we consider the aspect w.r.t. completion of project, the same is not complete till date and even OC has not been obtained. **Accordingly, 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 29.12.2016 till the valid offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or actual handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
- III. Direct the respondent to pay compensation for the delay @ Rs. 5/- per sq. ft. month starting from 1st July 2016 till the date of possession.



IV. Direct the respondent to pay a sum of Rs. 1,00,000/- towards cost of litigation.

47. The complainants in the aforesaid relief are seeking relief w.r.t compensation. 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

48. 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 at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 29.12.2016 till valid offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or actual handing over of possession whichever is earlier.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly



- payment of interest to be paid till date of valid handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The complainants are also directed to pay the outstanding dues, if any.
 - iv. 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.
49. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
50. The complaints stand disposed of.
51. Files be consigned to registry.

HARERA
GURUGRAM

v.l. - 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.05.2023