

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

**Ordre reserved on: 01.02.2023**

**Order pronounced on: 22.03.2023**

NAME OF THE BUILDER		RAHEJA DEVELOPERS LIMITED.	
PROJECT NAME		"RAHEJA REVANTA"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4227/2021	Rohit Choudhri and Sujata Choudhri V/S Raheja Developers Limited	Shri Ishaan Dang Advocate and Shri Garvit Gupta Advocate
2.	CR/4961/2021	Dina Nath Kathuria and Asha Kathuria V/S Raheja Developers Limited	Shri Nilotpal Shyam Advocate and Shri Garvit Gupta Advocate

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**ORDER**

1. This order shall dispose of both the complaints titled as 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, "Raheja Revanta" (residential group housing colony) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, possession along with delayed possession charges and compensation.
  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	Raheja Developers Limited at "Raheja Revanta" situated in Sector 78, Gurugram, Haryana.
<p><b>Possession Clause: -</b></p> <p><b>4.2 Possession Time and Compensation</b></p> <p><i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser <b>within</b> thirty-six (36) months in respect of 'TAPAS' Independent Floors <b>and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell</b> and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <b>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 period mentioned above.</b> The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the</i></p>	



*Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."*

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration / Total Amount paid by the complainants	Relief Sought
1.	CR/4227/2021 Rohit Choudhri and Sujata Choudhri V/S Raheja Developers Limited  Date of Filing of complaint 29.10.2021	Reply not received	C-204, 20 <sup>th</sup> floor, Tower /block - C  (Page no. 33 of the complaint)	17.05.2012  (Page no. 31 of the complaint)	<b>17.11.2016</b>  (Note: - 48 months from date of agreement i.e., 17.05.2012 + 6 months grace period)	TSC: - Rs.1,20,63,062/-  AP: - Rs.1,10,03,691/-  (As per customer ledger dated 16.06.2021 page no. 140 of complaint)	Possession along with delayed possession charges and compensation
2.	CR/4961/2021 Dina Nath Kathuria	Reply not received	B-414, 41 <sup>st</sup> floor, Tower	01.08.2012	<b>01.02.2017</b>  (Note: - 48 months)	TSC: - Rs.1,62,25,645/-	Possession along with delayed



and Asha Kathuria V/S Raheja Developers Limited.  Date of Filing of complaint 16.12.2021	/block - B (Page no. 33 of the compl aint)	(Page no. 30 of the complaint)	from date of agreement i.e., 01.08.2012 + 6 months grace period)	Rs.1,58,82, 323 /- (As per customer ledger dated 25.11.202 1 page no. 74 of complaint)	possess ion charges
--	--	--------------------------------------	--	---	---------------------------

**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)

- The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with 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 both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4227/2021 titled as Rohit Choudhri and Sujata Choudhri V/S Raheja Developers Limited** are being taken into consideration for determining the

rights of the allottee(s) qua delayed possession charges along with interest and others.

**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/4227/2021 titled as Rohit Choudhri and Sujata Choudhri V/S Raheja Developers Limited.***

S. N.	Particulars	Details
1.	Name of the project	"Raheja Revanta", Sector 78, Gurugram, Haryana
2.	Project area	18.7213 acres
3.	Nature of the project	Residential group housing colony
4.	DTCP license no. and validity status	49 of 2011 dated 01.06.2011 valid up to 31.05.2021
5.	Name of licensee	Sh. Ram Chander, Ram Sawroop and 4 Others
6.	RERA Registered/ not registered	Registered vide no. 32 of 2017 dated 04.08.2017
7.	RERA registration valid up to	04.02.2023 5 Years from the date of revised Environment Clearance
8.	Unit no.	C-204, 20 <sup>th</sup> floor, Tower/block- C

		(Page no. 33 of the complaint)
9.	Unit area admeasuring	1621.390 sq. ft. (Page no. 31 of the complaint)
10.	Date of execution of tripartite agreement	01.06.2012 (Page no. 77 of the complaint)
11.	Date of execution of agreement to sell	17.05.2012 (Page no. 31 of the complaint)
12.	Date of allotment letter	17.05.2012 (Page no. 26 of the complaint)
13.	Possession clause	<p><b>4.2 Possession Time and Compensation</b></p> <p><i>That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser <b>within</b> thirty-six (36) months in respect of 'TAPAS' Independent Floors <b>and</b> forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer &amp; water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the</i></p>

		<p><i>control of the Seller. <b>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 period mentioned above.</b> The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form &amp; Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay.....”</i></p>
14.	Grace period	<p><b>Allowed</b></p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated</p>



		<p>timeframe of 48 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 May 2016. As per agreement to sell, the construction of the project is to be completed by May 2016 which is not completed till date. <b>Accordingly, in the present case the grace period of 6 months is allowed.</b></p>
15.	Due date of possession	<p><b>17.11.2016</b></p> <p>(Note: - 48 months from date of agreement i.e., 17.05.2012 + 6 months grace period)</p>
16.	Basic sale consideration as per BBA at page no. 66 of complaint	Rs.1,14,48,500/-
17.	Total sale consideration as per customer ledger dated 16.06.2021 page no. 140 of complaint	Rs.1,20,63,062/-
18.	Amount paid by the complainant as per customer ledger dated 16.06.2021 page no. 140 of complaint	Rs.1,10,03,691/-



19.	Payment plan	Installment linked payment plan (As per payment plan annexed with buyer's agreement at page no. 65 of the complaint)
20.	Occupation certificate /Completion certificate	Not received
21.	Offer of possession	Not offered
22.	Delay in handing over the possession till date of this order i.e., 22.03.2023	6 years 4 months and 5 days

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- a. That the officials of the respondent approached the complainants in the year 2012 in their endeavour to convince them to purchase a residential apartment in the group housing colony known as "Raheja's Revanta" located in Sector 78, Gurugram, Haryana.
  - b. That the officials of the respondent represented to the complainants that construction of the said project would be definitely completed within a period of 48 months. They further assured the complainants that the apartments in the said project would be of the highest quality containing world-class facilities and state-of-the-art services.
  - c. That convinced by the representations and assurances proffered by the officials of the respondent, the complainants booked a residential

apartment, after filling the application form for booking a unit in the said project.

- d. That at that time, the complainants had also made payment of Rs.9,96,166/- to the respondent, duly acknowledged by it.
- e. That the complainants vide allotment letter dated 17.05.2012 were allotted an apartment bearing no. C-204 located on the 20th floor in tower 'C' in the said project admeasuring 1621.39 square feet (super area) along with two car parking spaces. They had opted for a construction linked payment plan.
- f. That agreement to sell dated 17.05.2012, prepared by the respondent was executed between the parties. The total basic sale price of the said unit was settled at Rs.97,12,126/-.
- g. That the terms and conditions incorporated in the aforesaid agreement to sell were tilted heavily in favour of the respondent and completely one-sided. The respondent was in a dominant position and was not amenable to reason. Moreover, the respondent was not even prepared to listen to the complainants or to sit across the table to discuss the contractual covenants contained in the agreement to sell. The complainants had no option at the relevant point in time but to execute the aforesaid agreement.
- h. That as per clause 4.2 of the aforesaid agreement, the possession of the said unit was to be offered to the complainants within a period of 48 months from the date of execution of agreement to sell. It would not be out of place to mention that the respondent had represented to the

complainants at the time of booking that the possession of the said unit would be handed over to them definitely by May 2016. The payment schedule had been appended as annexure-A to the agreement to sell.

- i. That the complainants had availed a housing loan amounting to Rs.90,00,000/- from LIC Housing Finance Limited (LICHFL) for purchase of the said unit. The tripartite agreement dated 01.06.2012 executed between the complainants, the respondent and LIC Housing Finance Limited along with the documentation kit containing the promissory note, agreement to mortgage, affidavit cum undertaking, loan agreement and power of attorney.
- j. That in June 2015, the complainants transferred the balance unpaid amount of the aforesaid housing loan to Housing Development Finance Corporation (HDFC) Limited. The home loan agreement executed by HDFC Limited in favour of the complainants along with payments schedule and documents containing terms & conditions.
- k. That a total amount of Rs.85,06,000/- had been sanctioned by HDFC Limited. It would not be out of place to mention that till date, an amount of Rs.75,32,528/- had been disbursed to the complainants by HDFC Limited.
- l. That the complainants had made payment of instalments on time as per the payment plan and without any delay. It would not be out of place to mention that they made a total payment of Rs.1,10,03,691/- to the respondent till date and the same was duly acknowledged by it.

- m. That the respondent was liable to handover the possession of the said unit to the complainants on or before 17.05.2016 as per the terms and conditions incorporated in the agreement to sell dated 17.05.2012. The complainants since May 2016 had regularly contacted the officials of the respondent to enquire about the handing over of possession of the said unit to them. However, the officials of the respondent never provided any direct answer to the queries posed by the complainants. Moreover, they were not forthcoming about details pertaining to the tentative timeline of completion of the project, status of construction at the site and whether, the occupation certificate had been applied for etc.
- n. That, furthermore, the complainants had also visited the corporate office of the respondent located at Saket, Delhi but the officials of the respondent had shut down the aforesaid office in order to completely cut off public dealing and avoid meeting the aggrieved allottees. They had also been issuing emails/letters to the respondent and kept enquiring about the handing over of possession of the said unit to them. However, no conclusive reply was ever provided by the officials of the respondent to the complainants
- o. That the complainants, on their part have duly complied with the terms and conditions incorporated in the Agreement to sell and have discharged all their contractual and financial obligations. They have lost faith and confidence in the respondent. It is submitted that the respondent is openly committing a white-collar crime and threatened the complainants with long drawn litigation in case they demanded

interest for the delay in handing over possession of the said unit from the respondent.

- p. That the respondent was liable to handover possession of the said unit to the complainants on or before 17.05.2016. However, till date possession of the said unit has not been offered to the complainants even after an inordinate delay of over 1933 days (more than 63 months). The complainants, on their part have duly complied with the terms and conditions incorporated in the agreement to sell and have discharged their contractual and financial obligations diligently. As on date, the complainants have made a total payment of Rs.1,10,03,691/- to the respondent.
- q. That it would not be out of place to mention that as per clause 4.2 of the agreement to sell dated 17.05.2012, in case the respondent fails to offer possession of the said unit to the complainants within the stipulated period, in that event, it shall be liable to pay to the complainant's compensation at the rate of Rs.7/- per square feet per month calculated on super area for the entire period of such delay. The aforesaid compensation amount is a pittance as compared to the value of the said unit. The said amount was unilaterally and arbitrarily quantified and incorporated by respondent in the agreement to sell.
- r. That in order to add insult to injury, notwithstanding the fact that the respondent has failed to offer possession of the said unit to the complainants till date, the respondent has not made payment of any amount towards delayed payment charges/compensation to them.

s. That the complainants have been at the receiving end of the dilatory tactics employed by the respondent for the last few years. Eventually, they have been forced to approach the authority on account of the contractual and financial defaults committed by the respondent towards the complainants.

**C. Relief sought by the complainants: -**

9. The complainants have sought following relief(s)
  - a. Direct the respondent/promoter to hand over possession of the said unit to the complainants after obtaining the occupation certificate from the competent authority.
  - b. Direct the respondent to pay interest to the complainants for the entire amount paid by them towards delayed possession charges from the due date of possession, i.e., 17.05.2016 till date.
  - c. Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses.
10. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 08.02.2022, 21.04.2022 and 02.11.2022. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent intentionally delayed the procedure of the authority by avoiding to file written reply. Therefore, in view of order dated 02.11.2022, the defence of the respondent was struck off.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be



decided based on these undisputed documents and submissions made by the complainants.

**D. Jurisdiction of the authority**

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. I Territorial jurisdiction**

13. 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.

**D. II Subject matter jurisdiction**

14. 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;*

***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.*

15. 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.

**E. Findings on the relief sought by the complainants.**

- E. I Direct the respondent/promoter to hand over possession of the said unit to the complainants after obtaining the occupation certificate from the competent authority.**
- E. II Direct the respondent to pay interest to the complainants for the entire amount paid towards delayed possession charges from the due date of possession, i.e., 17.05.2016 till date.**
16. 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."*

17. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

**4.2 Possession Time and Compensation**

*That the Seller shall sincerely endeavor to give possession of the Unit to the purchaser **within** thirty-six (36) months in respect*



*of 'TAPAS' Independent Floors and forty eight (48) months in respect of 'SURYA TOWER' from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions 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 period mentioned above. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay..... "*

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards



timely delivery of subject unit and to deprive the allottee of his 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.

**19. Payment of delay possession charges at prescribed rate of interest:**

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.*

20. 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.

21. 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 and 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 person, 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.

22. 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., 22.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
23. 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;"*
24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
25. 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 to sell executed between the parties on 17.05.2012, the possession of the subject unit was to be delivered within 48 months from the date of execution of this agreement. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 17.11.2016. The respondent has failed to handover possession of the subject unit 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 17.05.2012 executed between the parties. Further no OC/part OC has been granted to 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 allottees.

26. 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. 17.11.2016 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.III Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses.**

27. The complainants are seeking above mentioned relief w.r.t. compensation.

Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C)*, 357 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, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**F. Directions of the authority**

28. 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 each of 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., 17.11.2016 till handing over of possession or offer of possession




plus two months after obtaining occupation certificate, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. 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.
- 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., 10.70% 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.

29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

30. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
31. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2023

  
**(Ashok Sangwan)**

Member



**HARERA**  
GURUGRAM