

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

Complaint no. :	3718 of 2022
Date of filing complaint :	06.06.2022
First date of hearing:	06.07.2022
Date of decision :	02.02.2023

1. Sh. Rajesh Kumar Jain 2. Smt. Madhvi Jain Both R/o: 221, Deed Plaza Complex, Opp. Civil Court, Gurugram- 122001	Complainants
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Versus

1. The Anant Raj Corporation Regd. office: Plot No CP-1 Sector 8 IMT Manesar Gurugram	Respondents
2. Jubliant Software Services Private Limited Regd. office: H-65, Connaught Circus, New Delhi	

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Sh. Sukhbir Yadav proxy counsel for Shri Sanjeev Sharma (Advocate)	Complainants
Ms. Aparna Gupta (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainants/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 under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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	"Maceo", Sector- 91, Gurgaon
2.	Nature of project	Group housing colony
3.	RERA registered/not registered	Registered vide registration no. 314 of 2017 dated 18.08.2017
	Validity status	17.08.2019
4.	DTPC License no.	71 of 2008 dated 25.03.2008
	Validity status	24.03.2025
	Licensed area	15.575 acres
	Name of licensee	Jubliant Software Service Private Limited
5.	Unit no.	Q-502 on 5 th floor of tower Q (As per page no. 27 of complaint) <i>(Inadvertently, mentioned as unit no. Q-504 in proceedings dated 02.02.2023)</i>
6.	Unit area admeasuring	2491 sq. ft. [Super area] (As per page no. 27 of complaint)

		<i>(Inadvertently, mentioned as 9491 sq. ft. in proceedings dated 02.02.2023)</i>
7.	Revised super area	2724 sq. ft. (233 sq. ft. i.e. 9.35%) (As submitted by the respondents on page no. 05 of reply)
8.	Allotment letter	No formal allotment letter placed on record
9.	Date of apartment buyer agreement	20.07.2012 (As per page no. 19 of complaint)
10.	Payment plan	Construction linked payment plan (As per page no. 53 of complaint)
11.	Total sale consideration	Rs. 80,09,735/- (As per page no. 28 of complaint)
12.	Amount paid by the complainants	Rs. 78,60,312/- (As agreed by both the parties on page no. 7 & 5 of complaint & reply respectively) Rs. 80,23,896/- (As per SOA dated 28.03.2022 on page no. 57 of complaint)
13.	Possession clause	Clause 7.1 <i>The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/development of the said project and handover the possession of the said Apartment to the Allottee <u>within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure</u> . The Allottee(s)</i>

		<p><i>understands and agrees that the developer shall be entitled for a grace period of 180 days after the expiry of the aforesaid 36 months. The Developer after completing the construction shall apply and obtain the occupation certificate in the in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.</i></p>
14.	Due date of possession	<p>20.01.2016</p> <p>(Calculated from date of apartment buyer agreement i.e. 20.07.2012 + grace period of 180 days)</p> <p>Grace period of 180 days is allowed.</p>
15.	Application for OC dated	<p>25.08.2020</p> <p>(As per page no. 27 of reply)</p>
16.	Occupation certificate	<p>Received after filing of reply i.e. on 25.11.2022</p> <p>(As submitted by respondents during course of proceedings dated 02.02.2023. Copy of same has been supplied to the complainants)</p>
17.	Offer of possession	<p>Not offered till date filing of complaint i.e. on 25.11.2022</p> <p>(As submitted by respondents during course of proceedings dated 02.02.2023. It further submitted that such offer was immediately made after obtaining occupation certificate)</p>

B. Facts of the complaint

3. That as per the representations and advertisement it was represented that the respondents no. 1 would construct a group housing residential complex by the name and style of "MACEO" on parcel of land measuring 15.575 acres belonging to respondents no. 2, located at sector-91, Gurgaon, Haryana for which the respondents no.1 was granted license bearing no. 71 of 2008 dated 25.03.2008.
4. That the complainants are the original allottees wherein they entered into the buyer's agreement with respondents on 20.07.2012 for unit bearing no. Q-502 on 5th floor of tower-Q, admeasuring 2491 Sq. ft. for a total sale consideration of Rs. 82,15,326/-. Clause 7.1 of said agreement talks about the handing over of possession within 36 months from the date of execution of buyer's agreement which comes out to be 20.07.2015.
5. That it is pertinent to note that the complainants have already paid an amount of Rs. 78,60,312/- as per the statement of account dated 28.03.2022 and despite making the payment of the aforementioned amount, the possession of the subject unit has not been offered to them till date and thus, they seek indulgence of the Authority in grant of possession along with delay possession interest by the respondents no. 1. The complainants have approached the Authority under section 31 of the Act seeking relief under Section 18 of Act and further reserves their right to file separate complaint for compensation as and when required before the appropriate forum/ authority.

C. Relief sought by the complainants:

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

- (i) Direct the respondents to the handover the possession of the allotted unit.
- (ii) Direct the respondents to pay interest on amount paid by the complainants at the prevailing rate of interest as per RERA.

7. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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 respondents

8. The respondents has contested the complaint on the following grounds.

- i. That the complainants have not approached the Authority with clean hands and have presented wrong and concocted facts, in as much as even the basic facts such as due date of possession has been wrongly stated in the complaint.
- ii. That respondents no. 1 (hereinafter, "respondents-builder") entered into an engagement with respondents no.2 to construct a residential project on the land owned by respondents no.2, pursuant to which project 'Maceo' was launched by the respondents (hereinafter referred to as the "said project"). Owing to the well-established reputation of the respondents-builder, the complainants approached to book a unit in the said project, whereupon unit no. 502 in tower-Q, having super area of 2491 Sq. ft. was allotted to the them.

- iii. That subsequently, an apartment buyer's agreement dated 20.07.2012 (hereinafter referred to as the "said agreement") was executed between the complainants and the respondents-builder, whereby the aforesaid unit was allotted to the complainants for a total sale consideration of Rs.82,15,326/-. As per said buyer's agreement, the due date of possession was 36 months from the date of execution of the agreement, with additional grace period of 6 months, as such the due date oh hanging over of possession was 20.01.2016, as opposed to 20.07.2015 stated by the complainants.
- iv. That the complainants ought to have referred the disputes, if any, to arbitration in view of clause 35 of the said agreement. The complainants and the respondents have specifically and categorically agreed that in the event of disputes, claim and /or differences shall be referred to a sole arbitrator appointed by respondents-builder, thereby ousting the jurisdiction of the Authority.
- v. That the aforesaid due date of possession, i.e. 20.01.2016, was subject to force majeure conditions as stipulated in clause 19 of the said agreement. In this regard, it is most humbly submitted that the said project has to undergo unforeseen and adverse circumstances hampering and delaying the work progress of the said project because of which the possession of the flat/apartment could not be handed over within the stipulated period. It is pertinent to mention that the progress of the project was affected due to circumstances which were beyond the control of the respondents and the same are covered under the force majeure conditions stipulated in clause 19 of the said agreement. The delays were caused on account of orders passed by the Hon'ble National Green Tribunal and the State Pollution Control Board which issued various

directions to builders to take additional precautions and steps to curtail pollution. On account of the aforementioned reasons, the progress of the work of the respondents was abruptly hampered. All these events led to suspension and stoppage of works on several occasions which also resulted in labourers and contractors abandoning work. As a result of various directions from the authorities at different occasions, regarding water shortage and pollution control etc., coupled with labourers and contractors abandoning the works; the respondents-builder has to run from pillar to post in order to find new contractors and labourers, thus affecting the progress of the project.

- vi. That it is most respectfully submitted that overcoming the aforesaid force majeure conditions, the respondents-builder has completed the construction of the majority number of towers of the said project in 2019 itself and received the occupation certificate thereof on 28.11.2019. Further, the construction of tower 'Q', wherein the unit of the complainants is situated, was completed in early 2020, pursuant to which the it applied for occupation certificate on 25.08.2020 & 21.09.2020. However, due to the widespread of Covid-19 from 2020 onwards, the same has yet not been granted by the State of Haryana due to slow functioning of all the offices, and the occupancy certificate for tower 'Q' is still awaited. Pertinently, such period was declared as 'force majeure' by the Government of India, and ought to be excluded from the computation of delayed period.
- vii. That the respondents have always kept the complainants updated about the progress of construction of the said project vide various letters, and they never raised any objection whatsoever with respect to the delayed possession, which is evidenced from the fact that they paid the final

installment as late as 31.01.2020 without any demure and protest, and the said objection is being raised for the first time by way of the instant complaint, without trying to work out any amicable solution with the respondents. Hence, the present complaint ought to be dismissed on this ground alone and the complainants should be directed to approach the respondents to reach an amicable solution.

- viii. That all other towers in the said project have duly received the occupation certificate and the allottees have started residing in their respective units. Hence, the respondents-builder is ready and willing to offer another similar unit to the complainants in any other tower, which is ready for possession, thereby avoiding any further wait period of the complainants.
- ix. That the complainants have admittedly paid an amount of Rs.78,60,312/- against the total consideration amount, and as on date, an amount of Rs.11,60,399/- is outstanding on their part on account of the increase in area of the unit from 2491 sq. ft. to 2724 sq. ft., about which the complainants were duly intimated vide respondents' letter dated 28.12.2017.
- x. That the respondents have not yet raised the aforesaid demand to the complainants as the same needs to be raised upon offer of possession, and hence, even the respondents are bearing heavy losses by not raising such huge demands, merely due to the inaction on the part of the Government and awaiting the issuance of occupation certificate since more than 2 years. In view of the aforesaid facts, the complainants cannot be allowed to claim delayed possession charges when the complainants themselves are liable to pay such a huge amount to the respondents.

Further, it is pertinent to state that if the respondents are directed to pay delayed possession charges to the complainants at this stage, the same shall further affect the respondents' ability to offer possession of the said unit to the complainants as well as to other allottees of the said project. Hence, the present complaint ought to be dismissed on the aforesaid grounds, and the reliefs as sought in the instant complaint may be denied as the construction of Tower Q has already been completed and the delay in issuance of occupation certificate is on the part of the State of Haryana, and not on the part of the respondents.

9. All other arguments made in the complaint were denied in toto.
10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Even the written submissions submitted by the respondents have also been perused. Hence, the complaint can be decided based on those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.1 Territorial jurisdiction

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

12. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

13. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondents

F.I Objection regarding complainants are in breach of agreement for non-invocation of arbitration.

14. The respondents has raised an objection that the complainants have not invoked arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration

Madhusudhan Reddy & Anr. (2012) 2 SCC 506, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer forum.

16. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainants have also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

17. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.II Objection regarding delay due to force majeure circumstances

18. The respondents-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal (NGT) and Environment Pollution (Prevention & Control) Authority (EPCA) which further led to shortage of labour, delay in grant of occupation certificate and stoppage of work due to lock down amid Covid-19 pandemic. It further submitted that since these circumstances were beyond the control of the respondents, the period covered by same shall not be considered while calculating delay in handing over of possession. The Authority observes that work at the project site was hampered due to orders by NGT and EPCA to curb the pollution, however, these were for a short period of time. So, the plea advanced in this regard cannot be taken into consideration.

The respondents further alleged that there is delay of more than two years by the competent Authority in grant of occupation certificate. The Authority observes that the respondents has made an application dated

25.08.2020 for obtaining occupation certificate and the same was granted on 25.11.2022. It is observed that the respondent-company has failed to place on record any such document/order of any competent Authority wherein such period is declared as "zero-period". Hence, the plea of the respondents on account of delay in completion/handing over of possession due to delay in grant of occupation certificate is devoid of merits and hence, not tenable.

19. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

The respondents was liable to complete the construction of the project and handover the possession of the said unit was to be handed over within 36months from date of execution of allotment along with grace period of 180 days which comes out to be 20.01.2016 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-

performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants

Relief sought by the complainants:

G.I Direct the respondents to the handover the possession of the allotted unit.

20. The respondents has made an application dated 25.08.2020 for obtaining occupation certificate and as submitted by the respondents during course of proceedings dated 02.02.2023 and written submission dated 10.03.2023; the occupation certificate has been obtained on 25.11.2022 from the competent Authority. The respondents vide proceedings of even date submitted that the offer of subject unit has also been made to the complainants on the same date i.e. 25.11.2022 and supplied the copy of same to the complainants. The complainants alleged that the said offer of possession is accompanied by various demands that are not admissible as per buyer's agreement. It is a settled principle of law that the respondents shall not charge anything which is not part of buyer's agreement.
21. Coming back to the issue of possession, since the occupation certificate has been obtained and offer of possession has been made on 25.11.2022. The respondents is directed to ensure that the unit is complete in all aspects as per specifications of buyer's agreement. The complainants is directed to fulfil the obligation conferred upon it under Section 19(10) of Act of 2016 and take the possession of the subject unit within two months from date of this order.

G.II Direct the respondents to handover the possession of the allotted unit and to pay interest at the prescribed rate for every month of delay from due date of handing of possession till actual handing over of possession.

22. In the present complaint, the complainants intends to continue with the project and is 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."

23. Clause 7.1 of the buyer's agreement 20.07.2012 provides for handing over of possession and is reproduced below:

"Clause 7.1

The Developer based on its present and estimates and subject to all just exceptions, proposes to complete construction/ development of the said project and handover the possession of the said Apartment to the Allottee within a period of 36 months from the date of execution of this agreement unless there shall be any delay or failure due to force majeure. The Allottee(s) understands and agrees that the developer shall be entitled for a grace period of 180 days after the expiry of the aforesaid 36 months. The Developer after completing the construction shall apply and obtain the occupation certificate in the in respect of the residential apartment(s) from the concerned authority. However, in case any condition arises that is beyond the control of the company including but not limited to force majeure condition, the remaining period available shall commence after the expiry of such condition.."

24. The authority has gone through the possession clause of the agreement and observes that the respondents-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date

of execution of agreement. In the present case, the apartment buyer's agreement inter-se parties was executed on 20.07.2012; as such the due date of handing over of possession comes out to be 20.01.2016.

25. **Admissibility of grace period:** As per clause 7.1 of buyer's agreement dated 20.07.2012, the respondent-promoter proposed to handover the possession of the said unit within a period of 36 months along with grace period 180 days as grace period. The said clause is unconditional and provides that if the respondents is unable to complete the construction of the allotted unit within stipulated period of 36 months, then a grace period of 180 days shall be allowed to the respondents. The authority is of view that the said grace period of 180 days shall be allowed to the respondents being unconditional. Therefore, as per clause 7.1 of the buyer's agreement dated 20.07.2012, the due date of possession comes out to be 20.01.2016.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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.*

27. 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.
28. 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., 02.02.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
29. 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;"*
30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70 % by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.
31. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is

satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7.1 of buyer's agreement executed between the parties on 20.07.2012, the possession of the subject apartment was to be delivered within a period of 36 months plus 180 days from date of execution of such agreement. The due date of possession is calculated from the date of execution of buyer's agreement i.e.; 20.07.2012, which comes out to be 20.01.2016.

32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, as submitted by the respondents through its counsel during the course of proceedings dated 02.02.2023, that the occupation certificate has been obtained from the competent Authority on 25.11.2022 and it has also offered the possession of the allotted unit on 25.11.2022 only. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 20.01.2016 till the expiry of two months from the date of offer of possession or till actual handing over of possession, whichever is earlier. The respondents-builder has already offered the possession of the

allotted unit on 25.11.2022, thus delay possession charges shall be payable till offer of possession plus two months i.e. 25.01.2023.

33. During the course of proceedings dated 02.02.2023, the complainants raised an objection that the said offer of possession is accompanied with some charges that are not admissible as per buyer's agreement. The Authority is of considered view that the respondents shall not charge anything which is not part of buyer's agreement and further directs the respondents to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order and the complainants, thereafter, is directed to make payment of dues, if any, within next 30 days.
34. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 20.07.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.01.2016 till offer of possession plus 2 months i.e. 25.01.2023; at the prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondents to pay cost of litigation.

35. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections

12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

36. 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 respondents shall pay interest at the prescribed rate i.e. 10.70 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.; 20.01.2016 till the date of offer of possession (25.11.2022) plus two months i.e. 25.01.2023; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii) The respondents shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - iii) The respondents are directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.

- iv) The respondents are directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
- v) The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and to take the possession of the subject unit within two months from date of this order.
- 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 respondents/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.
37. Complaint stands disposed of.
38. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2023