

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

**Complaint no.** : 198-2020  
**Date of filing complaint** : 13.01.2020  
**First date of hearing** : 13.03.2020  
**Date of decision** : 16.05.2023

Satish Oswal <b>R/O:</b> - T2, 502, L&T Emerald Isle, Gfate No. 6, Saki Vihar Road, Powai, Mumbai.	<b>Complainant</b>
Versus	
1. M/s BPTP Private Limited 2. Countrywide Promoters Private Limited <b>Regd. Office at:</b> - OT 14, 3 <sup>rd</sup> floor, Next Door Parklands, Sector-76, Faridabad, Haryana, 121004.	<b>Respondents</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Vijay Singh	Advocate for the complainant
Sh. Harshit Batra	Advocate for the respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 allottees 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Description
1.	Name of the project	'Amstoria', Sector 102 & 102A, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Project area	Cannot be ascertained
4.	DTCP license no. and validity status	58 of 2010 issued on 03.08.10 and valid upto 02.08.2025
5.	Name of the license holder	Shivanand Real Estate Pvt. Ltd.
6.	RERA registration number	Not registered
7.	Date of execution of plot buyer's agreement	01.03.2013 (As per page no. 114 of complaint)
8.	Unit no.	C-229 (As per page no. 118 of complaint)
9.	Unit area admeasuring	225 sq. Yard (As per page no. 118 of complaint)
10	Possession Clause	5.1 Subject to Clause 13 herein or any other circumstances not





	<p>anticipated and beyond the contra of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of all instalments and the of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller Confirming Party, whether under this Agreement or Maintenance Agreement or otherwise, from time to time, the <b>Seller/Confirming Party proposes t to hand over the possession of the Plot to the Purchaser) within period of 24 months from the date of sanctioning of the service plan of the entire colony or execution of Plot Buyer's Agreement, whichever is later The Purchaser(s) agrees and understands that subject to Clause 13 of this agreement, ie Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months as stated above, for applying and</b></p>
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		obtaining necessary approval in respect of the colony
12.	Due date of delivery of possession	01.03.2015 (Calculated from the date execution of buyer's agreement) (Grace period is not allowed)
13	Total sale consideration	Rs. 1,36,45,023/- (As per page no. 172 of reply)
14	Amount paid by the complainant	Rs. 1,28,22,508/- (As per page no. 172 of reply)
13.	Occupation certificate	19.09.2017
14.	Offer of possession	28.10.2017 (As per page no. 170 of reply)

### B. Facts of the complaint

3. That complainant booked a plot bearing No. C-229 admeasuring 225 sq. yards (188.130 Sq. Mts) (hereinafter referred to as "Subject Unit") for a basic sale price of Rs. 89,43,750/- out of which an amount of Rs. 22,38,750/- was paid from 05/12/2010 to 04/04/2011 which is around 25% of the basic sale price. Further, for the sake of identification, the opposite parties assigned customer reference no.BE68/129931 to the complainant.



4. That the complainant signed the said application without reading and understanding the contents of the same as the respondents represented that detailed terms and conditions will be negotiated and settled at the time of signing the 'plot buyers' agreement'. The perusal of the said application would reveal that there is no date mentioned on the first page of the said application. It is pertinent to mention here that the respondents informed the complainant that the details will be filled in and the complete application will be thereafter handed over to the complainant.
5. That after signing the plot buyer's agreement, an amount of Rs. 26,25,000/- was paid vide cheque/demand draft No. 123001 in March 2013 and further amount of Rs 79,29,882/- was deposited in the account of the respondents from HDFC. That the respondents also earned an unreasonable and illegal charge amounting to Rs. 20,62,194/- towards overdue interest for which respondents had issued letter dated 18/02/2013.
6. That the complainant discussed the terms of loan for the purchase of the plot with India bulls. India bulls had agreed to sanction/finance 75% of the value of the plot as loan. The complainant received the sanction letter from India bulls and immediately forwarded the sanction letter to the respondents vide email dated 25/04/2011. However, India bulls advised the complainant that the project "Amstoria" is under approval and therefore, the loan will only be disbursed post the approval of the said project. The complainant vide email dated 25/04/2011 immediately informed the respondents that the India bulls have informed him that the project is not approved. That it is pertinent to mention that the

complainant requested the respondents not to levy any penal interest, as the loan disbursement is pending due to incomplete documentations/pending approvals from respondents. it is evident from the above statement that the complainant completed the process of sanction of loan from India bulls and submitted the sanction letter to the respondents. however, due to deficiency on the part of the respondents, India bulls advised that the disbursement of loan can only be done post approval of the project. That the respondents have unlawfully and in order to harass the complainant refused to accept the sanction letter issued by India bulls.

7. That thereafter, the Respondents vide email dated 25/04/2011 suggested that the complainant must get the loan sanctioned from HDFC Bank Ltd. or Punjab National Bank (PNB). The respondents informed the complainant that all the necessary documents have been forwarded for approvals of the project. Thus, as on 25/04/2011 the project was not approved, as admitted by the respondents itself.
8. That on 26/05/2011, the respondents wrote an email asking the complainant to provide the loan sanction letter from HDFC bank about the eligibility of the complainant. That Vide email dated 24/06/2011, the respondents informed that they are giving last and final opportunity to make payment. The respondents also informed that the last date for payment was June 13, 2011.
9. That the complainant vide email dated 28/06/2011 sent the loan approval letter received from HDFC on the same line as advised by the respondents. That the approval letter provided by the HDFC bank stated that the



disbursement will be made only after the approval of the project. That it is relevant to mention herein that the Respondents refused to accept the loan sanction letter issued by HDFC Bank which clearly shows the malafide conduct on the part of the respondents as they have refused to collect the India Bulls and HDFC Bank sanction letter, as their ulterior motive was to harass and mental agony to the complainant and made a ground to levy interest/penal interest alleging delay in making payment.

10. That vide Email dated 07/01/2017, the complainant received an email from the customer care team of the respondents wherein the complainant that almost the entire work informed is complete and that they would issue the possession letter of the Plot very shortly. That the respondents further informed that black topping works on the roads for plots in 225 sq. yards is going on. However, once again no further communication was received by the complainant with regard to status of the handing over of the possession.
11. That again on 14/03/2019, the complainant received a letter wherein the respondents informed that IndusInd Bank has extended finance for the development and completion of the said project. They further informed that an Escrow A/c has been opened with IndusInd Bank and asked the complainant to make all payments in the Escrow A/c. The complainant has reason to believe that amount received from the complainant and others for AMSTORIA project have been diverted for some other work. The complainant has no knowledge as to in which circumstances and under whose authority escrow account was opened. however, the complainant

firmly believes that the respondents has violated the terms and conditions of the license/approvals granted for the development of the said project.

12. It is pertinent to state herein that, that the letter dated 14/03/2017 is contrary to the earlier letter dated 07/01/2017 wherein the opposite parties had assured that the possession letter will be issued "very shortly". It has been more than four months since the issuance of letter dated 07/01/2017. However, the complainant has not heard anything with respect to handing over the possession letter in respect of the complainant's plot.
13. Moreover, it has come to the knowledge of the complainant that the Director General, Town and Country Planning, Haryana, Chandigarh had withdrawn the approval of plans in respect of the said project vide order dated 13/09/2013. The respondents had also been directed to stop all development works at site and prohibited from accepting amount against earlier booking. That the said information was never provided to the complainant regarding the orders passed by Director General, Town and Country Planning, Haryana, Chandigarh or apprised the complainant regarding the current status of the project. That the respondents received money and unjustly enriched itself despite prohibition to accept money by Director General, Town and Country Planning, Haryana, Chandigarh.
14. That the complainant issued legal notice dated 25/04/2017 to the respondents and asked them to refund the amount along with Interest. However, the respondents did not send any reply to the legal notice sent by the complainant. That the complainant vide several emails enquired



regarding the sanction plan but the respondents failed to provide a definite answer.

15. That the complainant was constrained to file a consumer complaint bearing number CC/1705/2017 before the Hon'ble National Consumer Disputes Redressal Commission (hereinafter referred to as "NCDRC"), for redressal of their grievances. During the pendency of the consumer complaint, the respondents vide email/letter dated 28.10.2017 offered possession of the plot in question on certain terms and conditions. The respondents also demanded an amount of Rs. 7,46,074/- from the complainant. The complainant had already paid Rs. 1,29,03,692/- to the respondents against the agreed consideration amount of Rs. 89,43,750/-. The respondents had already overcharged the complainant and had again raised demand of Rs. 7,46,074/- from the complainant. The complainant filed an application [IA No. 8529 of 2018] before the Hon'ble NCDRC, New Delhi for direction. The Hon'ble NCDRC vide order dated 19.11.2018 directed the respondents to handover the possession of the plot to the complainant within three weeks without prejudice to the rights and contentions of the parties.
16. That upon the direction of the Hon'ble National Consumer Disputes Redressal Commission, the respondents handed over the possession of the said unit to the complainant. However, the sale deed with respect to the said unit has not been executed till date. The respondents are insisting to pay additional amount despite the fact that the respondents have already overcharged the complainant.

17. That the complainant paid an amount of Rs. 1, 29, 03,692/- in respect of the said plot. However, despite receipt of the aforesaid amount which is more than the basic sale price, the respondents delayed in handing over the possession of the said unit and caused mental agony to the complainant for several years. Thereafter upon the directions of the Hon'ble National Consumer Disputes Redressal Commission, the respondents had no option but to handover the possession of the said unit to the complainant. Not only this, but the respondents have also forced the complainant to make payment of more than the cost of said plot including the development charges while knowing it very well that the respondents have not reached the milestone defined in the construction linked plan. the respondents did not even have in its possession even occupancy/completion certificate, which shows that there is no definite timeline, set by them to handover the possession.
18. That the respondents have been causing serious distress to the complainant on several occasions. That the respondents initially delayed in procuring the approval of the sanctioned plan of the Project from the Town and Country Planning Department due to which the loan approval process was also delayed. Thereafter, the respondents also delayed in handing over the possession of the said unit due to the non-procurement of the completion/occupation certificate.

**B. Relief sought by the complainant:**

The complainant has sought the following relief:

- i) Direct the respondents to pay delay possession charges along with prescribed rate of interest.



- ii) Direct the respondents to execute the sale deed for transferring the title in favour of the complainant.
- iii) Compensation for mental agony.

**C. Reply by the respondents**

The respondents by way of written reply made the following submissions.

19. It is submitted that the complainant has approached this Hon'ble Authority for redressal of his alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the Court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- a) The complainant has further misrepresented that the terms and conditions of the agreement were neither discussed nor mutually settled and that the respondents had informed the complainant that he would have to sign it in the form as it exists. In this context, it is submitted that the Complainant had initially submitted the signed agreement in early 2012, which was signed willingly and voluntarily but the complainant had deleted the name of the co-applicant without supporting documents. Thereafter, the complainant

executed the agreement on 01.03.2013 i.e. after 1 year of the previous agreement, on the same terms and conditions without any demur or protest. The complainant did not raise any concern qua any term of the agreement. However, with malafide intentions, such baseless allegations are being raised for the first time before this Hon'ble Authority.

- b) That the complainant has further attempted to misrepresent that the amount of Rs. 81,183/- was wrongly charged from the complainant for name deletion of co-applicant. In this context, it is submitted that apart from the fact that the said issue has been raised for the first time in the complaint under reply and hence, is barred by limitation it is submitted that at the stage of charging the said amount in 2013, it was clearly explained to the complainant that except for name addition or deletion in blood relation, as a company policy, the charges would be payable @ Rs. 350/- per sq. yd. + tax, which was readily agreed upon by the complainant. Thereafter, he made the payment of the said amount on 28.2.2013 without any demur or protest. However, after more than 8 years of paying the said amount, such allegations have been raised by the complainant which are in toto baseless.
- c) That it has further been misrepresented that from the website of DTCP, the complainant have come to know that DTCP had withdrawn the approval of plans in respect of the said Project vide order dated 13.9.2013 and further that respondents were directed to stop all development work at site and also prohibited from accepting amount



against earlier booking while withholding that the vide order dated 13.09.2013, DTCP had unilaterally, without affording any opportunity to the respondents to clarify its stand, withdrew the approval of demarcation cum layout with respect to license no. 58/2010. However, upon the representations made by the respondents, the said Order dated 13.9.2013 was withdrawn by DTCP vide Memo No. ZP-650/SD(BS)/2013/54662 dated 17.10.2013. However, with a view to prejudice this Hon'ble Authority, the complainant has deliberately not mentioned a word in their complaint regarding the said withdrawal of DTCP order dated 13.9.2013.

From the above, it is very well established, that the complainant has approached this Hon'ble Authority with unclean hands by distorting / concealing / misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainant is to unjustly enrich himself at the expense of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

20. It is pertinent to mention herein that the complaint is liable to be dismissed on the sole ground that the complainant even after taking the possession of the unit in question (as mentioned supra) has indulged himself in "Forum Shopping" as the complainant initially in 2017 filed a consumer complaint titled "Satish Oswal Versus BPTP Ltd. & Anr." bearing

consumer complaint 1705 of 2017 before the Hon'ble NCDRC, New Delhi, wherein the complainant had sought refund along with interest @18% p.a., and a similar relief has been prayed as in the present complaint. It is submitted that Vide order dated 19.11.2018, the Hon'ble NCDRC directed the respondents to deliver possession of the plot in compliance whereof the respondents vide email dated 21.11.2018 requested the complainant to visit the project site and take possession of the said plot. Whereafter, the complainant on 19.12.2018 accepted as well as acknowledged the physical handover of possession for the plot in question. In furtherance of the same, the complainant filed an interlocutory application ("IA") bearing no. 17369 of 2019 for the withdrawal of the complainant pending adjudication before the Hon'ble NCDRC, whereby the matter was withdrawn vide order dated 08.11.2019. However, the complainant chose not to clear the outstanding dues till date even after the handing over of physical possession of the plot in question. Meanwhile in 2017 the complainant knocked the doors of the Court of Ld. Metropolitan Magistrate, Patiala House Court, in 2017 to proceed with the criminal complaint (CTC/16782/2017) against the respondents.

21. Thereafter in 2018, the complainant yet again filed another case titled "M/s Satish Oswal Versus M/s BPTP Ltd." ((IB)-1595(ND) 2018)) before the Hon'ble National Company Law Tribunal ("NCLT"). However, the said complaint was deposed off vide Order dated 09.01.2019 on the submissions made by the Counsel for the complainant and recorded that the matter has been fully settled in view of the possession being offered to the complainant.



22. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainant is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate".
23. All other averments made in the complaint were denied in toto.
24. 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.

**D. Jurisdiction of the authority**

25. 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**

26. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

27. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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 complainant at a later stage.

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

**E. I Direct the respondents to pay delay possession charge along with prescribed rate of interest.**

28. That complainant booked a plot bearing No. C-229 admeasuring 225 sq. yards (188.130 Sq. Mts) (hereinafter referred to as "Subject Unit") for a total consideration of Rs. 1,36,45,023/- out of which the complainant paid Rs. 1,28,22,508/- till date. The counsel for the complainant states



that it is a case of forum shopping as complainant had already filed a criminal case in Patiala House, Delhi, NCDRC and NCLT. Further, the counsel for the complainant states that the relief being sought in all the above said complaints are different and further draws attention towards the orders passed by NCDRC at page no. 186 of the complaint and in case of order of NCLT at page no. 190 of the complaint.

29. The authority is of view that the the complaint filed before NCDRC was for handover of possession and withdrawn that complaint on November 8<sup>th</sup>, 2019, with liberty to avail such remedy other than a consumer complaint which may be open to the complainant in law. After that the complainant filed a complaint before NCLT for the possession where they received the possession and withdrawn the petition. The complainant filed a complaint before the Authority for delay possession charges and execution of conveyance deed. So, the Authority observes that the complaint is maintainable, and the complainant is entitled for delay possession charges along with prescribed rate of interest.
30. The complainant 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."*

31. Clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*Subject to Clause 13 herein or any other circumstances not anticipated and beyond the contra of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of all instalments and the of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller Confirming Party, whether under this Agreement or Maintenance Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Plot to the Purchaser) within period of 24 months from the date of sanctioning of the service plan of the entire colony or execution of Plot Buyer's Agreement, whichever is later The Purchaser(s) agrees and understands that subject to Clause 13 of this agreement, i.e. Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months as stated above, for applying and obtaining necessary approval in respect of the colony."*

32. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject



unit and to deprive the 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.

- 33. Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.*

- 34.** 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.

35. 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., 16.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
36. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—*

*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 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;"*

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoters which is the same as is being granted to the complainant in case of delayed possession charges

**E.II Direct the respondents to execute the sale deed for transferring the title in favour of the complainant**

38. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the



allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. Since the possession of the subject unit has already been offered on 28.10.2017 after obtaining occupation certificate. The respondents are directed to get the conveyance deed executed within a period of three months from the date of this order.

### **E.III Cost of litigation**

39. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation

### **F. Directions of the Authority:**

40. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- 1) The respondents are 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., 01.03.2015 till the offer of possession i.e. 28.10.2017 plus two months i.e. 28.12.2017 to the complainant(s) as per section 19(10) of the Act.
  - 2) The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottee respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
  - 3) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents.
  - 4) The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoters 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
41. Complaint stands disposed of.
42. File be consigned to the Registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**  
**Dated: 16.05.2023**