



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

<b>Complaint no.</b>	:	<b>2408 of 2021</b>
<b>Date of filing complaint:</b>		<b>10.06.2021</b>
<b>First date of hearing:</b>		<b>09.07.2021</b>
<b>Date of decision</b>	:	<b>20.04.2023</b>

1.	Dr. Kumar Rajiv S/o Sh. Hanuman Prasad	<b>Complainant</b>
2.	Smt. Sudhi Rajiv W/o Dr Kumar Rajiv	
<b>Both R/O:</b> House No. M - 4, Maharaja Hari Singh Nagar, Residency Road, Jodhpur, Rajasthan - 342001		
Versus		
	M/s Adani M2K Projects LLP <b>Regd. office:</b> 10th floor, Shikhar, Nr. Adani House, Mithakhali Six Roads, Navrangpura, Ahmedabad, Gujarat- 380009	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
S/Sh. Shalaj Mridul and Pratap Singh Rawat(Advocate)	Complainant
Sh. Prashant Sheoran (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Particulars	Details			
1.	Name of the project	Oyster Grande, Sector 102, Gurugram, Haryana			
2.	Total area of the project	19.238 acres			
3.	Nature of the project	Group Housing Colony			
4.	DTCP license details:				
	<b>Sno.</b>	<b>License no.</b>	<b>Validity</b>	<b>Licensed area</b>	<b>Licensee</b>
	1.	29 of 2012 dated 10.04.2012	09.04.2020	15.72 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
	2.	30 of 2012 dated 10.04.2012	09.04.2020	3.52 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
5.	Registered/not registered	<b>Registered</b> by Adani M2K Projects LLP			
	Registration details				
	<b>Sno.</b>	<b>Registration no.</b>	<b>Validity</b>	<b>Area</b>	
	1.	37 of 2017 dated 10.08.2017	30.09.2024	Tower G (15773.477 sq. mtrs.)	
	2.	170 of 2017 dated 29.08.2017	30.09.2019	Tower J Nursery school-1 & 2,	



				Convenient Shopping, Community Block X-1 & X-2 (19056.69 sq. mtrs.)
3.	171 of 2017 dated 29.08.2017	30.09.2019		Tower H (17229.629 sq. mtrs.)
6.	Provisional allotment letter	16.02.2019		(As per page no. 113 of complaint)
7.	Unit no.	J-1103, 11 <sup>th</sup> floor, Tower- J		(As per page no. 87 of complaint)
8.	Area of the unit (super area)	2550 sq. ft. (super area)		(As per page no. 88 of complaint)
9.	Date of execution of buyer's agreement	14.09.2013		(As per page no. 34 of complaint)
10.	Possession clause	<b>Article 5(A)- POSSESSION</b> <i>Subject to the compliance of all terms and conditions of this agreement by the allottee(s) including the timely payment of the sale consideration and other charges and all other applicable taxes/levies/interests/penalties, etc., the developer based on its present plans and estimates and subject to all just exceptions will endeavor to complete construction of said apartment <b>within a period of forty eight (48) months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months, subject to force majeure events (as defined herein) which shall include events/</b></i>		



		<p><i>circumstances or combination thereof which may prevent/ obstruct/hinder/ delay the construction development of the said project/complex. For the purpose of this agreement, the date of making an application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the said project/complex shall be treated as the date of completion of the apartment. In particular, after filing an application for grant of such certificate(s), the developer shall not be liable for any delay in grant thereof by the competent authorities.</i></p> <p>(page 62 of complaint) (As per page no. 56 of complaint)</p>
11.	Date of start of construction	15.02.2013 (As per demand letter dated 16.01.2016 on page no. 28 of reply)
12.	Due date of possession	14.03.2018 (Calculated from date of agreement i.e.; 14.09.2013, being later) (Grace period of 6 months is allowed)
13.	Total Sale Consideration	Rs. 1,63,15,277/- (As per page no. 37 of reply)
14.	Total amount paid by the complainant	Rs. 1,56,07,133/- (As per cancellation letter page no. 37 of reply)
15.	Pre- cancellation letter dated	26.03.2021 (As per page 133 of the complaint)
16.	Occupation certificate	12.02.2019 (As per page 38 of the reply)

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17.	Offer of possession	Not offered
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**B. Facts of the complaint:**

3. That in the year 2012, the respondents launched a project by the name and style of "Oyster Grande" on a piece of land situated at Sector-102/102 A, Village Khedki, Mazra, Gurugram, Haryana and for the same purpose issued advertisements in various newspapers, inviting investors in the said project.
4. That the respondent started demanding payments towards the advance registration of their residential units from the public. Initially, the complainants were not willing to invest in an upcoming project and wanted immediate possession. However, the broker and the officials of the respondent both made rosy proposals about the credibility and reliability of the respondent and further, represented that the possession of the subject unit shall be delivered within four years and made several promises, and also gave personal guarantees to facilitate them with the possession of the unit on time with all the promised facilities.
5. That the complainants believing the misrepresentation and fake claims made by the respondent vide a booking form dated 18.10.2012 applied for allotment of unit in the said residential project of the respondent and made payment of Rs. 12,00,000/- towards application, and also made further payment of Rs. 15,00,000/- as payment payable within 45 days of application and it was again promised to them that the project will be completed within a period of 4 years.

6. That despite having already made large payments towards the booking, the respondent has not started the project and further, failed to issue an apartment buyers agreement for nearly 1 year. It was only on 14.09.2013, it issued an apartment buyers agreement wherein allotting apartment being no. J-1103, 3 BHK + powder room and servant room on 11th floor, admeasuring super area of 2550 sq. ft. and apartment area of 1844 sq. ft., along with 2 covered basement car parking for a basic sales consideration of Rs.1,48,27,377/-.
7. That the subject unit was booked under construction linked payment plan and the total cost of the apartment inclusive of all charges was Rs. 1,63,15,227. As per article 5A of said agreement, it was agreed that the project will be delivered within 4 years thus the effective date of delivery was 13.09.2017. It was specifically enumerated under article 3E that time was the essence of the agreement. Moreover, it was agreed that the builder vide article 5A(i) would compensate the complainants with a delayed penalty. Thus, it was categorically agreed that the respondent would issue a notice for possession only after obtaining a completion certificate.
8. That pursuant, to the signing of the above apartment buyer's agreement, it kept demanding various sums of money and accordingly they have already paid a sum of Rs. 1,56,07,113, i.e. more than 95% of the agreed payment towards the apartment.
9. That between 2013 and 2017, despite having already made large payments towards the booking the respondent has not even started the construction of the project on time and kept delaying the same. They issued various

emails enquiring about the status of the project, however it kept on assuring that the construction is going on and asked them to remain patient and further, informed them that they have also received the RERA registration certificate.

10. That in September 2017, near the delivery date of the subject unit. The construction was delayed by the respondent at the site for 4 years. They kept on enquiring about the project by calling the respondent and also visited the site multiple times. They protested the delay in construction at the site with the management and met with the representatives of the company but there was no progress or even an addressal of the complainant's claims.
11. That on 16.02.2019, the respondent issued a communication to the complainants indicating that the construction of the apartment is nearly complete and demanded Rs. 23,06,059/- from them. The respondent assured that the apartment was complete . However, when they visited the site, they found that the project was far from completion and the apartment was not even in a habitable state. In fact, the lift of the building was installed. The complainants despite being senior citizens were made to take the stairs till 11th floor, just to inspect the apartment.
12. That the complainants issued a detailed email on 09.03.2019, to the respondents stating that the apartment was still incomplete and also requested for break-up of certain charges which were not agreed between the parties and yet were being demanded by them. The complainants demanded delayed penalty @ Rs.10 per sq. ft. of the super area of the

apartment to six month and @ Rs.15 per sq. ft. of the super area for the period of delay as agreed in buyer's agreement. The complainants further also demanded interest of delay @12% of the apartment for the delay.

13. That the respondent shockingly replied to the mail by the complainants that the project is completed as per government norms and have received the occupancy certificate. It stated that the date of application of occupancy certificate be treated as the date of delivery. Thereby, indicating that the date of receiving the actual occupancy certificate even if it is beyond the agreed delivery date, is of no significance, thereby not making them liable for any delayed payment interest. Further, the Respondent as a means to put more pressure on the complainants and despite having received more than 95% of the agreed payment towards the apartment, threatened the complainants with 18% interest as delayed penalty payment, if they do not budge to their illegal demands.
14. That the complainants on 30.09.2019, accordingly issued a legal notice, protesting against the illegal demands by the respondents and payment of delayed penalty in accordance with the terms of the agreement along with delayed payment interest. Various emails and communications between the parties regarding the issue, and it requested them to not to take legal action against it.
15. That the respondent on 11.10.2019, vide reply to the complainant(s) legal notice denied any liability on their part stating that the date of application for occupancy certificate be considered as the date of delivery and not the actual delivery date. Whereas in fact the apartment was not even complete.



16. That the Authority has already initiated suo moto action against the respondent for the improper RERA registration, thus, it is clear that the developer is not even properly registered thereby not entitled to demand any sum of money in terms of the act. It is pertinent to mention herein that the Authority has already issued notices to Adani M2K Projects, for not getting the project registered. Further, Haryana RERA has also initiated penal proceedings against the companies wherein the penalty of violations may go up to Rs. 12 crores against the promoter and Rs 2.7 crores against the real estate agent.
17. That the respondent issued demand letters and pre-cancellation notices to them demanding Rs.29,86,472, despite the fact that its RERA certificate was pending. Thus, as is evident from the above the project has been grossly delayed and despite having received 95% of the total agreed payments, there has been no valid reason given by the respondent to the complainants for the delay in the delivery of the apartment.
18. That the respondent taking advantage of its dominant position has devised a strategy to wriggle out of its reciprocal obligations being giving flimsy, false and illegal reasons for its delay in delivery. The stance of the respondent that the date of application of the occupancy certificate rather than the date of obtaining the completion certificate be considered as the date of delivery has no contractual or legal basis and it is liable to be deprecated for the same.
- A** 19. That the respondent's claim that the apartment is ready for use is also false as, the complainants on visiting the site have clearly found that the

apartment is not in a habitable condition. Thus, the possession letter and the holding charges ensued are irrelevant.

20. That the inconsistent and lethargic manner in which it has conducted his business and its lack of commitment in completing the project on time, has caused them great loss and harm. The complainants being aggrieved by the same, wrote several mails to the respondent addressing his issues and it is quite intriguing to note herein that whenever they asked for the status of the construction at the project site from the Respondent, its officials in every response sent by them always assured that the project shall be completed within time and the same response has been continuing since 2013. However, to the utter dismay of the complainant the construction of the project work has been grossly delayed even till date.
21. That the respondent has been very clever by not responding to the request of the complainant and has continued to assure to the complainant that the project shall be completed in due time and the project is delayed due to certain unforeseen circumstances. However, when the complainant did not pay any heed to the assurances given by the representatives of the respondents and demanded full refund, the representatives of the respondent arranged a meeting with the management of the company. To their utter dismay, the management instead of refunding the money promised to get the allotment of the complainant transferred to another property in some other state. They invested such a huge amount of his hard earn money after choosing the location of the project and had no interest in such property. Moreover, the other property was also of an unfinished

project, the complainant had no interest in getting his money stuck in another project by the respondent. The respondent's proposal was nothing but a bait to once again deceive them, which nonetheless the complainant did not accept.

22. That the complainant gave due notice to the respondent demanding the delayed penalty interest and proper possession as per the terms of the agreement. The complainant demands delayed penalty compensation terms of Section 18(1) read with section 18(3) of the act, in interest of justice equity and good conscience.
23. That the claims and assurance by the respondent have turned out to be a sham since the project construction of the project is grossly delayed despite time being the essence of the agreement. The respondent in order to save itself from any probable legal action has been misrepresenting facts and circumstances before the complainant. They have fulfilled all its obligations in terms of the agreement executed between the parties. In fact, they have already made a payment of more than 95% towards the project.
24. That it has not only harassed them physically and mentally by its unscrupulous act of lying and deceiving but has also flouted the norms and provisions of the Act of 2016.

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

25. The complainant have sought following relief(s):

- i. Direct the respondent to handover the possession of the completed apartment as per terms of agreement dated 14.09.2013.

- ii. Direct the respondent to make payment of penalty for delay as per the apartment buyers agreement @Rs.10 per sq. ft. of the super area of the apartment up to six month and @Rs.15 per sq. ft of the super area for the period of delay after that as agreed in the apartment buyers agreement.
- iii. Direct the respondent to pay a sum of Rs. 10,00,000/- to the complainants towards damages and mental pain and agony suffered by them.
- iv. Direct the respondent to pay sum of Rs. 75,000/- towards charges of the present proceedings.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:-

26. That the respondent launched a residential project under the name and style of "Oyster Grande" in Sector 102/102A in Gurugram, Haryana ("said project"), wherein the complainant approached it and applied for allotment of an apartment in the said prestigious project of the respondent. Thereafter, they were allotted an apartment bearing no. J-1103 for a total sale consideration of Rs. 1,63,15,227/- plus taxes/charges.
27. That the complainants at their own accord choose to make the payment of sale consideration as per construction linked plan attached. Subsequently, apartment buyer's agreement was executed between the parties on 14.09.2013.
28. That the respondent duly achieved the various stages which were agreed through the construction linked plan and as and when such stages of construction was achieved, demand notices were issued to them, calling

upon them to make the payment of the installment linked to with such stage of construction. The complainant never made the payment of the due installments on time.

29. That as per clause 5(A)(h)(ii), it is specifically mentioned that in the event of delay in paying any installments as required to be paid under the agreement, the time period for delivery of the apartment shall stand extended in equal measure to the delay in payment of all the installments. Thus, in view of the aforementioned agreed condition total time period of delayed payments shall be added to the date of possession. That the table below shows all the default committed by the complainant.

Sr. no.	Date of demand	Due date	Date of payment	Delay in payment
1.	19-01-2015	03-02-2015	25-02-2015	23 days
2.	16-07-2015	31-07-2017	28-08-2015	28 days
3.	01-09-2015	16-09-2015	Not paid	Continuing
4.	19-10-2015	03-11-2015	Not paid	Continuing
5.	12-12-2015	28-12-2015	Not paid	Continuing
6.	14-01-2016 (cancellation notice)	30-01-2016	26-02-2016	163 days

30. That after receiving cancellation notice, they approached the respondent and requested to restore the allotment and admitted the default on their part and made payment of the principal amount and agreed to pay the interest in due course.
31. That even after restoration of allotment, they again started making defaults in the payments as shown in following table.

Sr. no.	Date of demand	Due date	Date of payment	Delay in payment
1.	16-02-2019 ( possession offered )	04-03-2019	Not paid	Continuing
2.	11-04-2019	ASAP	Not paid	Continuing
3.	17-05-2019	ASAP	Not paid	Continuing
4.	23-08-2019	ASAP	Not paid	Continuing
5.	26-03-2021(pre cancellation)	ASAP	Not paid	Continuing

32. That the complainant who has been in complete default of the terms and conditions which he himself has agreed with regard to payment of due installments of the sale consideration of the said unit. The complainant opted for construction linked payment plan, and in pursuance thereof, they failed to pay amount on time despite of several requests being made for the payment of installments, which were due towards the respondent, as per the construction linked plan.
33. That it is within notice and knowledge of the complainant that respondent sent a pre-cancellation notice as duly admitted in the complaint itself. However instead of making payment of the amount complainant chose to file the present complaint on false and frivolous grounds.
34. That as far as date of possession is concerned it is pertinent to note that as per clause 5(A)(i) of the agreement developer endeavoured to complete the construction of the subject unit within 48 + 6 months i.e. 54 months from date of execution of agreement, subjected to force majeure circumstances.
35. That as per clause 5 (A)(h)(ii), it is specifically mentioned that in the event of delay in paying any installments as required to be paid under this

agreement, the time period for delivery of the apartment stands extended by such delay in payment of all the installments. That as per above stated table total number of days till the 26.02.2016 comes to 210 days i.e. about 7 months. Thus, by adding 7 months in 54 months, the date of possession comes to 14.10.2018. However, on the other hand construction was complete before 12.10.2017 and respondent applied for the occupation certificate on 12.10.2017 itself. That the occupation certificate was thereupon received on 12.02.2019. It is pertinent to mention here that respondent is not at fault for delay in getting the occupation certificate sanctioned. That the delay in sanctioning of occupation certificate was procedural only, thus as per the agreement, respondent completed the construction well within time and as soon as the occupation certificate was received respondent without any delay offered the possession to the complainants but it is the complainants who are at fault by not making payment.

36. That the tower wherein the subject question is located in project has already been legally completed and its occupation certificate has already been obtained by the respondent. It is also to be seen that the respondent has duly completed the construction in time bound manner and since the complainant is a defaulter as he certainly does not deserve the any relief from the authority.

A 37. That from the above stated facts, it is clear that the complainant defaulted at many stages in payment of the installments in his own chosen plan and did not paid any heed to the communications and notices of the respondent. It

was not at fault at any stage of the dealings which took place between the respondent and the complainants.

38. That the present complaint is based on falsehood and suppression of material facts. Therefore, they have not approached the Authority with clean hands. It is settled law that any litigant who approaches the court of law with unclean hands, is disentitled to any relief whatsoever. On this short ground itself, the present complaint deserves to be dismissed.
39. That the allegations levied in the present complaint, against the respondent are wrong and are premised on false allegations. It vehemently urges that it is their attempt to mislead and misguide Authority by canvassing a vague story, which has no legs to stand in law.
40. That the present complaint is not maintainable as they have failed to show any deficiency in services or unfair trade practice or any action or inaction of the respondent, which has compelled them to approach the Authority. Moreover, the complaint has been filed by them without showing an iota of material against the respondent, which would entitle them to any relief whatsoever from the Authority, or from any other forum.
41. All other averments made in the complaint were denied in total.
42. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**



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

**E. I Territorial jurisdiction**

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**

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 promoter, the allottee 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.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding non-payment of timely installments by the complainant-allottees.**

44. The respondent has raised an objection that there is no delay in handing over of possession as, as per clause 5(A)(h)(ii), it is specifically mentioned that in the event of delay in paying any installments as required to be paid under the agreement, the time period for delivery of the apartment shall stand extended in equal measure to the delay in payment of all the installments. As such there was delay of approximately 210 days wherein the complainants have failed to make timely payments towards the consideration of allotted unit and as such leading to shift in due date of handing over of possession to 14.10.2018 whereas it has already applied for grant of occupation certificate on 12.10.2017 after completing the construction which was later thereupon received on 12.02.2019 and submitted that the respondent is not at fault for delay in getting the occupation certificate sanctioned and the said delay is procedural in nature.
45. The Authority observes that the plea of the respondent regarding delay in payments towards consideration of allotted unit is devoid of merits as, no doubt that the complainants made various defaults towards consideration of allotted unit but any such delay would attract delay payment interest at the equitable rate of interest. Moreover, as per given facts the complainants have already made payment of Rs. 1,56,07,133/- against total sale consideration of Rs. 1,63,15,277/-constituting 95% of consideration which is a considerable amount. Moreover, if there is any delay on part of any competent authority while granting any certificate, then it may approach the competent authority to get that period/procedural delay to be declared

as “zero-period”. Since nothing in this regard that whether a certain period is declared as “zero-period” or not, hence, no leniency in this regard can be given to the respondent.

**G. Findings on the relief sought by the complainant:**

**G.I Direct the respondent to handover the possession of the completed apartment as per terms of agreement dated 14.09.2013.**

46. The occupation certificate has already been obtained on 12.02.2019. The respondent took a plea that the complainants have made various default in making payment towards consideration of unit and hence as per clause 5(A)(h)(ii), the due date of possession stands extended. The relevant clause of the agreement is reproduced hereunder:

*“That in the event of delay in paying any installments as required to be paid under this agreement, the time period for delivery of the apartment stands extended by such delay in payment of all the installments....”*

47. The Authority observes that no doubt that the complainants made various defaults towards consideration of allotted unit which even resulted in cancellation of subject unit by the respondent on 14.01.2016 on account of defaults in making payments. However, the complainants sent letter dated 26.02.2016, for restoration of said unit and the said request of the complainants was accepted by the respondent.

48. It is observed that Article 5(A)(i) of agreement clearly enumerates date of handing over of possession as forty-eight months with grace period of six months from date of agreement or commencement of construction, then existence of any such cause reproduced above which provides no concrete date for handing over of possession and moreover, shifts the onus of delay attributable, if any, on the allottee is nothing but mere a tactics to take advantage of his own wrong. The builder has dominated his position and

added such ambiguous and one-sided clause in the agreement. As enumerated in leading case of **Pioneer Urban Land And others v. Govindan Raghavan (2019)**, that "A term of a contract will not be final and binding in nature if it manifests that the flat purchaser had no choice except signing on the dotted line, on the contract which is formulated by the builder." Moreover, the fact cannot be ignored that if there was any delay in payments towards consideration of allotted unit such delay would attract delay payment interest at the equitable rate of interest. Moreover, as per given facts the complainants have already made payment of Rs. Rs. 1,56,07,133/- against total sale consideration of Rs. 1,63,15,277/- constituting 95% of consideration which is a considerable amount. The Authority is of view that in case of delay in payment of installments towards consideration of unit, it will be charged with an equitable interest as per Sec 2(za) of the Act. The respondent is directed to issue fresh statement of account within 15 days wherein adjusting delay possession charges, thereafter, the complainant is also directed to make payment of outstanding dues, if any. Therefore, respondent is directed to handover the possession of the subject unit complete in all aspects as per specifications of buyer's agreement within next 30 days after receiving payment of outstanding dues, if any.

**G.II Direct the respondent to make payment of penalty for delay as per the apartment buyers agreement @Rs.10 per sq. ft. of the super area of the apartment up to six month and @Rs.15 per sq. ft of the super area for the period of delay after that as agreed in the apartment buyers agreement.**

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49. In the present complaint, 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."*

50. Clause 21 of the buyer's agreement 11.10.2011 provides for handing over of possession and is reproduced below:

***"Article (A)(i)***

*Subject to the compliance of all terms and conditions of this agreement by the allottee(s) including the timely payment of the sale consideration and other charges and all other applicable taxes/levies/interests/penalties, etc., the developer based on its present plans and estimates and subject to all just exceptions will endeavor to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months, subject to force majeure events (as defined herein) which shall include events/ circumstances or combination thereof which may prevent / obstruct / hinder / delay the construction and development of the said project/complex..."*

51. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of forty-eight months from the date of execution of agreement or commencement of construction, whichever is later; with a grace period of six months. In the present case, the buyer's agreement inter-se parties was executed on 14.09.2013 and date of start of construction as per demand letter dated 16.01.2016 is 15.02.2013; as such the due date of handing over of possession is calculated from date of agreement i.e. 14.09.2013, being later; which comes out to be 14.09.2017 without considering admissibility of the grace period.

52. **Admissibility of grace period:** As per Article 5(A)(i) of buyer's agreement dated 14.09.2013, the respondent-promoter proposed to handover the possession of the said unit within a period of forty-eight months and six months grace period. The said clause is unconditional. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional. Therefore, as per Article 5(A)(i) of the buyer's agreement dated 14.09.2013, the due date of possession comes out to be 14.03.2018.

53. **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.*

54. 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.

55. 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., 20.04.2023

is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

56. 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;"*

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

58. It can be observed that a pre-cancellation letter was sent on 26.03.2021 by the respondent but no cancellation/final cancellation letter has been acceded by it which means that the unit has not been cancelled by the respondent.

59. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of article 5(A)(i) of buyer's agreement executed

between the parties on 14.09.2013, the possession of the subject unit was to be delivered within a period of forty-eight months and six months grace period from date of execution of such agreement i.e. 14.09.2013 or commencement of construction i.e. 15.02.2013, whichever is later. The due date of possession is calculated from the date of execution of buyer's agreement i.e.; 14.09.2013, being later; which comes out to be 14.03.2018. The respondent has obtained the occupation certificate from competent Authority on 12.02.2019. The respondent thereafter issued demand corresponding "offer of possession" vide letter dated 16.02.2019 as evident from page no. 113 of complaint. The complainant wrote legal notice dated 30.09.2019 challenging demands raised vide said letter dated 16.02.2019 and the same was replied by the respondent on 11.10.2019. Any such issues w.r.t illegal demands was not raised during the course of proceedings by either of the parties, thus, the issues does not need any further deliberation. Coming back to the issue w.r.t offer of possession, the respondent sent letter dated 16.02.2019 wherein raising demands payable on "offer of possession" which was followed by another letter dated 11.04.2019 wherein calling upon the complainants for execution of conveyance deed after clearing the dues payable. Thereafter, demand letters dated 17.05.2019 and 23.08.2019 were also issued in this regard before issuance of pre-cancellation letter dated 26.03.2021. However, no cancellation was proceeded thereafter. The occupation certificate has been obtained from the competent Authority on 12.02.2019 and the same was intimated to the complainants vide letter dated 16.02.2019 followed by various reminders. The Authority is of considered view that Section 19(10) of Act obligates the allottees to take possession of the subject unit within two months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was obtained from the competent Authority on 12.02.2019 and intimated

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the same to the complainants vide letter dated 16.02.2019. Therefore, in the interest of natural justice, the complainant should be given two months' time from the date of offer of possession. This two 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. 14.03.2018 till the expiry of two months from the date of offer of possession or till actual handing over of possession, whichever is earlier. The respondent-builder has obtained occupation certificate on 12.02.2019 from the competent Authority and intimated and called upon the complainants vide letter dated 16.02.2019 calling upon them to make payment against "offer of possession". Keeping in view the obligation conferred upon the complainant under Section 19(10) of Act, delay possession charges shall be payable till offer of possession plus two months i.e. 16.04.2019 (16.02.2019 + two months). Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 14.09.2013 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 respondent 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., 14.03.2018 till offer of possession (16.02.2019) plus two months i.e. 16.04.2019 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.III Direct the respondent to pay a sum of Rs. 10,00,000/- to the complainants towards damages and mental pain and agony suffered by them.**

**G.IV Direct the respondent to pay sum of Rs. 75,000/- towards charges of the present proceedings.**

60. 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.*, 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. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, they 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:**

61. 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:

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- i. The respondent 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.; 14.03.2018 till the date of offer of possession (16.02.2019) plus two months i.e. 16.04.2019; as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
  - iii. 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.
  - iv. The respondent is directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.
  - v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement dated 14.09.2013, within next 30 days.
  - vi. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order.
62. Complaint stands disposed of.
63. File be consigned to the registry.

*V.I - S*  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 20.04.2023**