

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

Complaint no.:	733 of 2019
First date of hearing:	11.03.2020
Date of decision:	05.07.2023

Pushpa Malik

R/o Hno. A-1/251, 2nd floor, Safdarjung Enclave, Near
Kamal Cinema, New Delhi-110029

Complainant

Versus

M/s JMD Ltd.

Office address: 3rd floor, JMD regent square, M.G. Road,
Gurugram, Haryana-122001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. M.S Sehrawat (Advocate)

Complainant

Mr. Pankaj Chandola & Gunjan Kumar (Advocates)

Respondent

ORDER

1. The present complaint dated 26.02.2019 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 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 as provided 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"JMD Suburbio", Sector 67, Gurugram
2.	Nature of the project	Commercial Complex
3.	DTCP license no.	291 of 2007 dated 31.12.2007
	Validity of license	30.12.2024
	Licensee	Anand dham Realtors Pvt. Ltd
4.	HRERA registered/ not registered	30 of 2022 dated 25.04.2022
	HRERA registration valid up to	30.12.2024
5.	Unit no.	CW-302, 3 rd floor. [page 41 of complaint]
6.	Area of the unit	609.24 sq. ft
7.	Date of execution of buyer's agreement	06.12.2011 [page 39 of complaint]
8.	Possession clause	15. POSSESSION <i>That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within three years from the date of sanction of revised building plan from the competent authorities or further extended period of six (6) months after the expiry of 36 months as agreed</i>



above except the force majeure circumstances. The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of god, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the government and for any other public or competent authority or for any delay made by government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the company and in any of the aforesaid events, the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the unit allottee(s). In the event of any such contingency arising/happening, the company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the company, so warrant, the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the unit allottee(s) for the period of suspension of the scheme. If for the aforesaid or any other reason the company is forced to abandon the whole or part of the scheme, then and in such a case, the company's liability shall be limited to the refund of the amount paid by the unit allottee(s) without any interest or any compensation whatsoever.

(Emphasis supplied)

[pg. 45 of complaint]

9.	Date of sanction of revised building plan as mentioned in reply at pg. 3 of reply	13.11.2013
10.	Due date of possession	13.05.2017 [Note: Grace period of 6months included being unqualified]
11.	Basic consideration as per buyer's agreement at pg. 41 of complaint	₹ 29,36,536/-
12.	Total amount paid by the complainant as per SOA dated 24.12.2018, at page 66 of complaint	₹ 30,85,562/-
13.	Occupation certificate granted on	18.10.2018 [pg. 11 of reply]
14.	Offer of possession	03.12.2018 [pg. 13 of reply]

B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:

- a. That, the complainant is Pushpa Malik w/o Captain Komal Malik and was interested to start her own business concern post-retirement of her husband. Consequently, she decided to book a suitable property for her own use. That, she got interested in commercial property coming up in general area Sector 67, Gurugram. She finalized JMD SUBURBIO-1 being constructed in Badshahpur, Sohna Road, Sector-67, Gurugram, Haryana.
- b. That, properties at JMD SUBURBIO-1, Sector 67, were being sold to perspective buyers through their official agent-M/SJMD Space Estate (A Darshan Arora and Associates concern, brother-in-law of the Respondent), as given in various rubber stamps affixed on various official papers. Same is also borne by mail exchange between K Malik

(Husband of Mrs Pushpa, Malik (the Complainant herein) and Mr Bharat Arora dated 21 Aug 2011 (Representing Darshan Arora and Associates).

- c. That, Mr Bharat Arora, being official agent of JMD Limited, through his skills at sales, impressed upon complainant that construction of the project has already started and would be delivered on time. Only limited number of units are available. Hence, lured the complainant to buy a unit immediately in this project.
- d. That, based on mutual discussions, an amount of ₹ 10,80,335/- through cheques was paid to Mr Bharat Arora. That, Mr Barat Arora, on behalf of his principal, communicated that he would provide the official receipt from his principal once the cheque amount is credited in the account of respondent.
- e. That, before the receipt was provided, complainant was made to sign a formal application cum registration form on 05 Oct 2011, i.e., after about two months of paying booking amount to the respondent. That, for the first time it was disclosed in para 5 of this application cum registration form' that earnest money would be forfeited in the following events:
 1. If the buyer delays scheduled payments due to him.
 2. If buyer fails to sign buyer's agreement. That, it was also disclosed in this application cum registration form at para 6, that in the event of delay of payment on behalf of buyer, complainant shall be charged an interest @ 24%
- f. That the bare perusal of this application cum registration form' would indicate that it has been presented by dominant partner i.e., respondent who was in commanding position because, the

complainant had already paid/advanced huge sum of ₹ 8,00,000/- by now and was at mercy of respondent if she does not wish to lose this heavy amount.

- g. That, this is evident from the fact that not even one clause lays out any responsibility on part of respondent. Not even the timelines of completion of this project were committed by the builder in writing in this 'application cum registration form'.
- h. That, only commitment, respondent made in this 'application cum registration form' is given at para 18, is for saving the respondent, which is reproduced verbatim, "If as a result of any rules or directions of the Government or any Authority or if competent authority delays, withholds, denies the grant of necessary approval for the project or due to force majeure conditions, the company after provisional and/or final allotment is unable to deliver the unit to the intending allottee the company shall be liable to refund the amounts received from him/her without interest.
- i. That, this amounts to clear exploitation of weaker party at the hands of dominating party. That, after reading this application cum registration form the reason for not providing official receipt of ₹ 8,00,000/- till that time, dawned on the complainant. But, at this stage, there was real risk of losing this amount and hence signature on this form became a compulsion rather than a choice.
- j. That, in any case, complainant had her hands clear, and she never intended to default in payments and hoped that respondent would deliver as per their promise. Hence signed.



- k. That, the complainant was allotted commercial unit in the project - JMD SUBURBIO with unit no - CW-302 having super area-609.24sq. ft., with a total cost of ₹ 29,36,536/-.
- l. That, after about four months of paying booking amount, the respondents called the complainant to their office and submitted pre-printed, commercial premises buyer's agreement.
- m. That, the complainant's intention had always been to deliver as per her promises i.e., making payment on time and an amount which is due to her. Complainant had paid a sum of ₹ 27,79,134.70 amounting to more than 96% of the dues to her.
- n. That, even after expiry of scheduled date of providing possession to complainant, she had paid a sum of INR 3,06,428/- to respondent.
- o. That, total payments made by complainant to respondent amount to ₹ 30,85,562.70/-. That the respondent has not provided possession to complainant till date as the unit and common areas are still not fit for occupation and respondent has failed to supply copies of mandatory permissions/licences/ authorisation as asked for by the complainant in her E-mail dated 24.12.2018.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:
 - a. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.
 - b. Compensation for mental agony & cost of litigation.
5. On the date of hearing, the authority explained to the respondent/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 filed by the respondent.

6. The respondent has contested the complaint on the following grounds:
- a. That the respondent - M/s. JMD Ltd., is a company incorporated under the provisions of Companies Act, 1956 and having its registered office at 6 UGF, Devika Tower, Nehru Place, New Delhi-110019.
 - b. That the respondent company - M/s. JMD Ltd. is one of India's most trusted real estate groups. 'JMD Ltd.' is acclaimed real estate company in India and enjoys tremendous goodwill for its pioneering work in the real estate field. 'JMD Group' is a well-established and reputed business corporate house engaged in the businesses of development of residential and commercial complexes, malls/shopping centres/complexes, IT & SEZ & Hospitality, in Delhi NCR and other parts of the country.
 - c. That Mr. Kuldeep Narotra is the authorised person of the respondent company, authorised vide resolution dated 04.02.2017 to defend and represent the respondent company in present complaint.
 - d. That the complainant applied for allotment of a commercial unit in respondent's multi-storeyed commercial complex JMD Suburbio, situated at village Badashapur, Sector 67, Tehsil & District Gurgaon, Haryana. Thereafter, through commercial premises buyer's agreement' dated 06.12.2011, the complainant agreed to purchase a commercial unit no. CW- 302, ground floor, in said Commercial complex at the rate of ₹ 4,820/- per sq. ft and accepted the terms and conditions of said agreement and after inspection of site and also

after verification and confirmation in all respect regarding all sanctions and approvals the complainant executed the said agreement.

- e. That at the time of signing the said commercial premises buyer agreement the respondent clarified to the complainant of the facts that M/s. Anand Dham Realtors Pvt. Ltd. entered into a development agreement on 20.04.2007 with M/s. Ansal Properties & Infrastructure Ltd. and Ansal obtained license No. 291 dated 31.12.2007 from Director of Town and Country Planning, Haryana. The complainant at the time of execution of the commercial premises buyer agreement, the respondent clarified the fact to the complainant that out of the aforesaid sanctioned FSI of 3,22,986 sq. ft., an FSI of approximately 2,22,618 sq. ft. along with corresponding land i.e. front side of the said land has been agreed to be sold by Anand Dham and Ansal to the respondent company i.e., JMD Ltd. It is also pertinent to mention herein that sanctioned building plans were also inspected and duly seen by the complainant at the time of execution of said agreement, while the respondent company has been advised by its prestigious customers for change in building plans as the area under the project is surrounded by the large chunk of residential townships and is best fit for commercial mall.
- f. Therefore, consider the above proposal from almost every customer and consent in writing. Respondent company has made through its architect a proposed building plan and is duly shown with marking of each unit to each one of its customers and is also signed and acknowledged by its customers including the present complainant and respondent company has applied for revision in building plans

and developed the said project in accordance with: the said proposed/revised building plans and got completed the project in time and also have received occupation certificate with the concerned authorities on dated 18.10.2018 and the respondent has already issued the letter regarding the offer of possession.

- g. That the complainants opted for a construction linked plan for the payment of installments against the said commercial unit and demands were raised in accordance with the said plan. It is pertinent to mention here that respondent company has requested to the concerned authorities for sanction of revised building plans and same has been done on 13.11.2013 valid for the period 12.11.2018 and made all its efforts in order to complete the said project in terms of the said agreement instead of being a developer and has completed the construction of said commercial complex and applied for grant of occupation certificate on 15.06.2016 and same was received on dated 18.10.2018. The respondent company has already intimated to all its prestigious customers/ unit allottee(s) about the completion of said project and also about the application and grant of occupation certificate and assured after receipt of occupation certificate, possession of allotted units shall be handed over to all the allottee(s), which is pending due to the non-receipt of occupation certificate by the concerned authorities.
- h. That the complainant has failed to show any terms/conditions under which he can claim refund without cancellation or is entitled to interest. On the contrary as per clauses 6 & 7 of the said agreement, time is essence and in case of delay in payment, the earnest money shall stand forfeited. There is no term in the said agreement under

which complainant can claim refund/interest. Under the said agreement complainant was bound to give balance outstanding and take delivery of commercial unit after receipt of occupation certificate in terms of clause 16 of said agreement. The complainant breached fundamental terms of the said agreement. Neither in the complaint nor otherwise the complainant showed/mentioned any term of said agreement or any law under which he is entitled to refund/interest, which was purely a civil contract, and the terms and conditions has to be followed in letter & spirit. It is also pertinent to mention herein that the project was completed in June 2016 and accordingly application for grant of occupation certificate was made to the concerned authorities and the same has been received 18.10.2018, due to which HARERA is having no jurisdiction and applicability over the said project and no customer can take the undue advantage of said legislation. The respondent company has invested its own money & developed the said project/complex, the complainant is only entitled to make balance payment and take possession of said unit as per the said agreement.

- i. That there is no allegation in the complaint nor any evidence filed by complainant that the respondent company failed to abide by terms of agreement or the progress of construction was slow or there is any deficiency or defect on part of respondent company, whereas complainant's case is that he was unable to make the balance payments in time as per payment plan and he has taken personal loan which he wants to return to the Loaner due to his needs. Admittedly the complainant has breached the agreement/abandoned the agreement, not entitled to any

relief/refund/interest/compensation/damages etc. The complainant invested in the said property for investment purpose, for making money and when the property prices went down, the complainant stepped back from the agreement, putting the respondent company at loss, because on the assurance/booking of complainant, the respondent company has developed said unit and could not sold to anyone else. The complainant is trying to gain out of his own wrong. It is submitted the said agreement is binding between the parties and the complainant has filed the above-mentioned case only in order to wriggle out of his obligations under the said agreement.

- j. That the above-mentioned case is an abuse of process of law and is not maintainable at all in the eyes of law. The complainant has concocted a false and baseless story and the present complaint has been filed with malafide intention and to gain by way of its illegal design, motive and plan. The complainant has not come before the Hon'ble Authority with clean hands and has filed the above-mentioned complaint suppressing and distorting material facts from the Hon'ble Authority and therefore, this present complaint is liable to be dismissed with cost.
- k. That the present complaint is beyond the scope of this Hon'ble Authority as the respondent company has already applied way back in 2016 before commencement of HARERA and the same is barred by law. The complainant has not disclosed anything as to how the present complaint is within the jurisdiction of present authority/forum/court/tribunal. Thus, the complaint of the complainant is wholly non maintainable and is liable to be rejected

on the above said ground. The complainant has not disclosed any date of the alleged cause of action from which the complainant got right to sue before this authority. Even according to the allegations of the complainant, the present complaint is not maintainable before this authority.

- l. That the complaint does not disclose a cause of action and further there is no merit in the same and hence liable to be dismissed. On a meaningful reading of the complaint, it is manifestly found to be vexatious and meritless in the sense of not disclosing a clear right to sue, therefore, is liable to be dismissed. The complaint discloses no material facts, giving rise to any cause of action against the respondent company, but only a trick to gain by way of illegal design, motive and plan and therefore the same is liable to be dismissed.
 - m. That the complaint is baseless and is flagrant abuse of process of law. The complaint has been filed with the sole object to harass and blackmail the respondent company in order to gain by illegal means. The respondent company submits that the complaint is wholly misconceived and untenable in law and is liable to be dismissed with heavy cost under section 35 A of the CPC.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

9. 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

10. 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)

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. 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 relief sought by the complainant.

F.I. Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges interest on the amount paid. 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.

"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."*

13. Clause 15 of the agreement to sell provides for handing over of possession and is reproduced below:

*"That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within **three years from the date of sanction of revised building plan from the competent authorities or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances.** The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of god, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the government and for any other public or competent authority or for any delay made by government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the company and in any of the aforesaid events, the company shall be entitled to a reasonable extension of time for delivery of possession of the*

said premises to the unit allottee(s). In the event of any such contingency arising/happening, the company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the company, so warrant, the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the unit allottee(s) for the period of suspension of the scheme. If for the aforesaid or any other reason the company is forced to abandon the whole or part of the scheme, then and in such a case, the company's liability shall be limited to the refund of the amount paid by the unit allottee(s) without any interest or any compensation whatsoever."

14. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are 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.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within 3 years from the date of sanction of revised building plan or further extended period of 6 months after the expiry of 36 months as agreed above except the force majeure circumstances. The authority calculated due date of possession according to clause 15 of the agreement dated 06.12.2011 i.e., within 36 months from date of building plan approval i.e., 13.11.2013. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.

15. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

16. 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.

17. 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., **05.07.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
18. 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;"

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
20. 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 clause 15 of the agreement executed between

the parties on 06.12.2011, the possession of the subject apartment was to be delivered within 36 months from date of building plan approval i.e., 13.11.2013. The period of 36 months expired on 13.11.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 13.05.2017. The respondent has not yet offered the possession of the subject apartment. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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., 13.05.2017 till 03.02.2019 i.e., after expiry of 2 months from the date of offer of possession (03.12.2018), at 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.

F. II. Compensation for mental agony and cost of litigation.

21. 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 may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 13.05.2017 till 03.02.2019 i.e., after expiry of 2 months from the date of offer of possession (03.12.2018).
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
- iii. The respondent is directed to handover the physical possession of the unit to the complainant after clearing the outstanding dues, if any including maintenance charges within 2 weeks from the date of this order.
- iv. The arrears of such interest accrued from 13.05.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which



the promoters 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.

- vi. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2023