

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

Complaint no. :	169 of 2022
Date of pronouncement of order :	27.10.2023
1. Abhay Kumar Singh 2. Swathy Varadarajan R/o - Power - 202, Seven Lamps Avenue, Sector- 82, Vatika India Next, Gurugram, Haryana	<b>Complainants</b>
Versus	
BPTP Ltd., R/o: - M-11, Middle Circle, Connaught Circus, Delhi - 110001	<b>Respondent</b>
<b>CORAM:</b>	<b>Member</b>
Shri Sanjeev Kumar Arora	
<b>APPEARANCE:</b>	<b>Complainants</b>
Mr. Siddharth Karnawat (Advocate)	
Mr. Harshit Batra (Advocate)	<b>Respondent</b>

**ORDER**

1. The present complaint dated 07.02.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions under the provision of the act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 37-D, Gurugram
2.	Nature of project	Group Housing Towers
3.	<b>RERA registered/not registered</b>	Registered 299 of 2017 dated 13.10.2017
4.	<b>DTPC License no.</b>	83 of 2008 dated 05.04.2008   94 of 2011 dated 24.10.2011
	Validity status	04.04.2025   23.10.2019
	Name of licensee	Super Belts Pvt. Ltd And 3 Others   Countrywide Promoters Pvt Ltd And 6 Others
	Licensed area	23.18 acres   19.74
5.	Unit no.	T-21-603, Tower 21 [As per page no. 51 of complaint]
6.	Unit measuring	1998 sq. ft. [As per page no. 51 of complaint]

7.	Date of execution of Flat buyer's agreement	05.12.2012 (As per page no. 46 of complaint)
8.	Date of building plan	21.09.2012 (Page 1 of reply)
9.	Possession clause	<p><b>5. Possession</b></p> <p><b>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within e Commitment Period.</b> The Seller/Confirming Party shall be additionally entitled to a Grace Period of 10 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</p> <p><i>1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), Stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</i></p>



10.	Due date of possession	<b>05.06.2016</b> <b>(Calculated from the date of execution of buyer's agreement)</b>
11.	Basic Sale Price	<b>Rs. 1,04,89,500/-</b> [as per page no. 52 of complainant]
12.	Total amount paid by the complainant	Rs. 1,26,77,868/- (As alleged by the complainant)
13.	Occupation certificate dated	24.08.2022 (As per DTCP Website)
14.	Offer of possession	13.12.2021 (As per page no. 144 of reply) (Invalid offer of possession as OC has been received on 24.08.2022)
15.	Grace period	<i>In the present case, the promoter is seeking a grace period of 180 days for finishing work and filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 09.12.2021 it is implied that the promoter applied for occupation certificate on 28.06.2019 which is later than 180 days from the due date of possession i.e., 05.06.2016. The clause clearly implies that the grace period is asked for filing and pursuing occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days, he does not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 05.06.2016</i>

**B. Facts of the complaint**

5. That The present complaint has been filed by the complainants under Section 12 read with Section 14, 18 & 19 of the Real Estate (Regulation and Development) Act, 2016 for violation of Section 11(4)(a) of the Act wherein it has inter-alia been prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the Act and the Rules to the allottee(s) as per the agreements executed between them.
6. That the complainants in the year 2012 were looking to purchase a residential property and were approached by the Respondent for purchasing a Unit in the Residential Project being developed by the Respondent named 'Terra' situated at Sector 37-D, Gurugram, Haryana [hereinafter referred to as the "Project"]. Based on the various representations made by the Respondent, the Complainants paid an amount of Rs. 7,00,000/- (Rupees Seven Lakh Only) towards booking a Unit in the Project on 07.09.2012. In furtherance of the same, the Complainants submitted a Booking Application Form to the Respondent on 07.09.2012 for booking a Unit admeasuring 1,998 sq. ft., in the Project being developed by the Respondent. That the Complainants had booked the Unit under a Subvention Payment Plan.
7. That after collecting a substantial amount of Rs. 20,00,000/- towards consideration of the Unit, the Respondent issued the Allotment Letter dated 07.12.2012. The Complainants were allotted the Unit bearing No.

T21-603, on the 6<sup>th</sup> Floor in Tower 21, admeasuring of 1998 sq. ft. The Respondent further executed a Flat Buyer's Agreement dated 05.12.2012 in the favor of the complainants. It is submitted that the Complainants were shocked to find that the Agreement was filled with various arbitrary and one-sided terms and conditions.

8. It is pertinent to submit that the respondent had lured them to book the Unit under a Subvention Payment Plan whereby the Respondent would assume the liability of making pre-EMI payments in lieu of the Complainants for the agreed 'Liability Period'. Thus, the Complainants availed a home loan of Rs. 1,12,00,000/- from Housing Development Finance Corporation Limited. That the Bank sanctioned the loan availed by the Complainants vide letter dated 24.09.2012. In furtherance of the Subvention Payment Plan, the Respondent, the Complainants and the Bank executed the Tripartite Agreement dated 19.12.2012. That as per Clause 3 of the Tripartite Agreement, the Respondent was liable to make pre-EMI payments to the Bank in lieu of the Complainants till 30.06.2015.
9. That as per Clause 1.6 read with Clause 5.1 of the Agreement, the possession of the Unit was promised to be offered within 42 months from the date of approval of the building plan or execution of the Agreement, whichever is later, along with a grace period of 180 days for making offer of possession of the Unit. That the Building Plan for the Project was approved on 21.09.2012 and the Agreement was executed on 05.12.2012.
10. The Complainants complied with each payment demand as was raised by the Respondent and possession of the Unit would be offered within the

time promised as per the Agreement i.e. by 05.06.2016. The Respondent had collected an amount of Rs. 1,26,77,868/- against consideration of the Unit from the Complainants. However, the Respondent failed to offer possession of the Unit to the Complainants within the time promised i.e. by 05.06.2016 or even within a reasonable period thereafter.

11. It is pertinent to submit that the Respondent has offered possession of the Unit vide Letter of Offer of Possession dated 13.12.2021. The Respondent has offered possession of the Unit only after an inordinate delay of more than 5 (five) years from the promised date of possession as per the Agreement. Furthermore the Respondent has mentioned that it has only received an in-principle approval of the Occupation Certificate with respect to the tower in which the Complainants have booked their Unit. That as per the Statement of Accounts annexed with the Offer of Possession dated 13.12.2021, the Respondent had collected an amount of Rs. 1,26,77,868/- against consideration of the Unit from the Complainants. Furthermore, the Respondent has arbitrarily increased the Super Area of the Unit from 1,998 sq. ft. to 2,191 sq. ft. Thus, the Complainants sought a copy of the Occupation Certificate, a copy of the Layout Plan of the Project whereby the increase in the Super Area of the Unit was calculated and the delay compensation for the inordinate delay of more than 5 years from the promised date of possession as per the Agreement vide email dated 14.12.2021. However, the Respondent has failed to resolve the said queries raised by the Complainants till date. It is submitted that as per Section 18 of the Act the Respondent was liable to pay interest to the

Complainants at a prescribed rate of interest which is prescribed as the highest marginal cost of lending rate plus two percent.

12. It is submitted that the Respondent has failed to offer possession of the Unit to the Complainants within the time promised as per the Agreement. That the possession of the Unit has been offered only after a delay of more than 5(five) years from the promised date of possession as per the Agreement. That the Respondent has failed to provide a copy of the Occupation Certificate and offer physical possession of the Unit till date. It is furthermore submitted that none of the circumstances that have resulted in this inordinate delay, were and are, beyond the control of the Respondent. The Complainants feel cheated because it is apparent that the promises made by the Respondent were nothing but false and dishonest.
13. It is stated that the Complainants had booked the Unit in the Project in the year 2012 and since then they have eagerly awaited possession of their Unit. Therefore, despite the inordinate delay that has been caused by the Respondent, the Complainants seek appropriate compensation for the period of delay caused by the Respondent. It is stated that the Project, "Terra" is registered with this Hon'ble Authority and hence the present complaint is within the jurisdiction of this Hon'ble Authority.

### **C. Relief Sought**

14. This Authority may be pleased to direct the respondent as follows:
- a) Direct the Respondent to offer possession of the Unit complete in all respects and in conformity with the Buyer's Agreement and for



the consideration mentioned therein, with all additional facilities with warranties and as per quality standards promised and execute all necessary and required documents in respect of the Unit in favor of the Complainants

- b) Direct the Respondent to pay interest @ 9.30% per annum on the amount deposited by the Complainants with the Respondent with effect from the date of delivery promised in the Agreements, till the date of execution of the sale deed in the favor of the Complainants;
- c) Direct the Respondent, to pay a sum of Rs. 5,00,000/- (Rupees Five Lakh Only) to the Complainants towards compensation for mental agony caused by the Respondent;
- d) Direct the Respondent, to pay a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the Complainants towards litigation costs.

**D. Reply by the respondent**

15. That The acts of the Complainants are *per se* in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act of 2016") as he falls under the bracket of defaulter in terms of Section(s) 19 (6) and 19 (7) of the Act of 2016, Hence, the Complainants cannot seek any relief under the provisions of Act of 2016 or rules frame thereunder. The provisions enshrined under Section(s) 19 (6) and 19 (7) of the Act of 2016 are reproduced herein for the sake of ready reference:

16. It is submitted that the complainants approached this Hon'ble Authority for redressal of their 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 cases 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 tantamount to fraud not only against the Respondent but also against the adjudicating Authority and hence the Complaint is liable to be dismissed *in limine*.
17. The complainants have concealed from this Hon'ble Authority that under the subvention payment plan the Complainants till date have paid Rs. 27,38,536/- and the rest of the amount has been paid by the bank i.e. the HDFC Bank on behalf of Complainants amounting to Rs. 99,39,332/- . Further, the Respondent has also paid Rs. 10,58,941/- on account of the pre-emi interest.
18. The complainants have further concealed from this Authority that they had defaulted in reminting timely payments *qua* the lawful demand raised by the respondent constrained by which the Respondent has issued the Reminder Notice - I dated 19.12.2012, reminder notice dated 13.01.2022, Reminder Notice - II dated 02.02.2022 and Reminder Notice - III dated 15.02.2022 respectively.
19. Further, on 06.07.2021, the Respondent sent a customer update email with respect to the project enclosing therein the construction update along

with the brochure of the project TERRA depicting the real-time construction status of the project including Tower 21.

20. From the above, it is very well established, that the Complainants have 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 Complainants is to unjustly enrich themselves at the expense of the Respondent 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.
21. It is clarified in the Rules published by the state of Haryana, the explanation given at the end of the prescribed agreement for sale in Annexure A of the Rules, it has been clarified that the developer shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing agreement executed with its customers.
22. It is submitted that the Relief(s) sought by the Complainants are unjustified, baseless and beyond the scope/ambit of the Agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. The complainants entered into the said Agreement with the Respondent with open eyes and is bound by the same. That the relief(s) sought by the complainants travel way beyond the four walls of the Agreement duly executed between the parties. The

Complainants while entering into the Agreement has accepted and is bound by each and every clause of the said Agreement including Clause 6.1 thereof which *per se* provides for delayed penalty in case of delay in delivery of possession of the Unit by the Respondent.

23. It is pertinent to mention herein that the building plans were sanctioned on 21.09.2012, whereas, the FBA was executed on 05.12.2012. Therefore, in view of the clause 5.1 r/w Clause 1.6 r/w Clause 10 of the agreement, the due date of possession arrives out to be 05.12.2016 i.e. 42 months from the date of execution of the FBA in addition to grace period of 180 days, which is further subject to force majeure circumstances.
24. It is submitted that the construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. *Vide* its order NGT placed sudden ban on the entry of diesel trucks of more than ten years old and directed that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly came of halt, after the lifting of the ban it took some time for mobilization of resources by various agencies employed with the Respondents.
25. Thereafter, the Environment Pollution (Prevention and Control) Authority, EPCA, imposed a ban on the construction activities within the Delhi-NCR region expressing alarm on severe air pollution level. The said

ban was commenced from 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018.

26. It is germane to mention herein that the construction was further affected by the ban announced by the Commission for Air Quality Management ("CAQM") on 16.11.2021 on the directions issued by the Hon'ble Supreme Court of India whereby it banned the construction and demolition activities in Delhi-NCR region along with calling curbs on polluting sources such as banning the entry of the trucks into Delhi, except those carrying essential items which was thereafter lifted by the Hon'ble Supreme Court on 25.11.2021.
27. Despite all the Respondent achieved in competition of the project and applied for the grant of occupation certificate on 18.01.2021 and same was granted to the respondent on 09.12.2021. Thereafter, the respondent in terms of the FBA issued the offer of possession letter dated 13.12.2021 to the complainants. However, it is the Complainants themselves who failed to clear the demand raised in the offer of possession and did not come forward for taking the possession of the unit in question.
28. That both the Complainant and the Respondents being the parties to the agreement dated 05.12.2012 are bound by the terms and conditions of the same. It is apposite to mention herein that the parties vide clause 17 of the agreement dated 05.12.2012 both the parties have agreed for amicable settlement of disputes and in the event of failure of amicable settlement, to refer the matter to arbitration.
29. All the averments in the complaint are denied in toto.

30. Copies of all the relevant documents have been duly 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 submissions made by the parties.

#### **E. Jurisdiction of the authority**

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**

31. 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**

The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

##### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the*

*common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

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

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

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

**F.1 Objection regarding delay due to force majeure circumstances.**

33. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the Unit within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later. So, the due date of subject unit comes out to be

05.06.2016 as is calculated from date of execution of agreement being later.

In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 05.06.2016. The respondent is claiming benefit of NGT orders and various other orders which came into effect in the year 2018 whereas the due date of handing over of possession was much prior to the event of those stay orders. Therefore, the authority is of the view that outbreak of the same cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the mentioned orders itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

34. Further in the judgement of the Hon'ble Supreme Court of India in the case of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Civil Appeal no. 6745-6749 of 2021), it was observed

25. "The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the

**allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"**

35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate and proviso to section 18 provides that where an allottee does not intend to withdraw from the project, she 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.*

36. 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.
37. 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., 27.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

38. 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;"*

39. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
40. On consideration of the documents available on record and submissions made by both the parties 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 5.1 read with 1.6 of the agreement executed between the parties on 05.12.2012, the possession of

the subject apartment was to be delivered within stipulated time i.e., within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later i.e., by 05.06.2016. The offer of the said unit has been made on 09.12.2021 and the same has been on record but the same is invalid as the OC for the present tower has been obtained on 24.08.2022 much later than the said offer of possession has been made. The respondent has delayed in offering the possession and till now the same has not been offered.

***Validity of offer of possession***

It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;**
- ii. The subject unit should be in a habitable condition;**
- iii. The possession should not be accompanied by unreasonable additional demands.**

In the present matter, the respondent has although offered the possession of the allotted unit on 09.12.2021 i.e., before obtaining occupation

certificate from the concerned department on 24.08.2022 along with alleged additional demand of Rs.46,69,960/-. Therefore, no doubt that the offer of possession has been sent to the complainants but the same is accompanied with unreasonable additional demands. Thus, the offer of possession is an invalid offer of possession as it triggers (i) and (iii) component of the above-mentioned definition.

41. 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., 05.06.2016 till the date of valid offer of possession plus two months or actual handover of possession whichever is earlier at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

**F.II Direct the respondent to award compensation of Rs. 2,00,000/-**

42. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. *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.(supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of

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

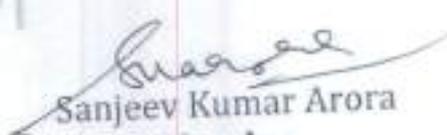
#### **G. Directions of the authority**

43. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to handover the possession of the unit within 30 days from the date of this order.
- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them from the due date of possession i.e., 05.06.2016 till the date of valid offer of possession plus two months or actual handover of possession whichever is earlier after deduction of pre-EMI already paid by the respondent.

- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
  - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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.
  - vi. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
44. Complaint stands disposed of.
45. File be consigned to registry.

**HARERA**  
**GURUGRAM**

  
Sanjeev Kumar Arora  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 27.10.2023