

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

Complaint no. :	469 of 2023
Date of filing complaint:	01.02.2023
Date of decision :	21.11.2023

1. Sh. Rajan Gupta 2. Smt. Shikha Goyal Both R/O: C 501, Surya Vihar, Sec 21, Gurgaon-122016	Complainants
Versus	
M/s Ashiana Dwellings Private Limited Regd. office: 3H, Plaza M6, Dist. Center Jasola, New Delhi-110025	Respondent

CORAM:	
Ashok Sangwan	Member
Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Harshita Setia (Advocate)	Complainants
Sh. Nitish Harsh Gupta (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 provisions 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 complainants, 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	Ashiana Mulberry, Sector-2, Gurgaon
2.	Project type	Group Housing Project
3.	RERA registered/not registered	Registered vide registration no. 44 of 2017 dated 11.08.2017
	Validity status	30.06.2020
4.	DTPC License no.	16 of 2014 dated 10.06.2014
	Validity status	09.06.2014
	Licensed area	10.25 acres
	Name of licensee	Ashiana Dwellings Private Limited
5.	Provisional allotment dated	21.11.2015 [Page 37 of complaint]
6.	Unit no.	508 fifth floor Tower 2 [page 37 of complaint]
7.	Unit area admeasuring	1210 sq. ft. [page 46 of complaint]

8.	Date of apartment buyer agreement	21.11.2015 [page 44 of complaint]
9.	Possession clause	<p>Clause 11.2 of agreement</p> <p><i>The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within a <u>period of 39 (thirty-nine) months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months ("completion date")</u> and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer position of the set apartment to the allottee.</i></p>
10.	Date of start of construction	Not available on record
11.	Due date of possession	<p>21.08.2019</p> <p>(Calculated from date of agreement i.e. 21.11.2015 as date of start of construction is not available on record + 6 months grace period)</p> <p>Grace period of 6 months is allowed</p>
12.	Payment plan	Subvention linked payment plan
13.	Total sale consideration	Rs.74,34,471/-

14.	Amount paid by the complainants	Rs.57,84,793/- As alleged by the complainant
15.	Occupation certificate	02.11.2022 [page 107 of reply]
16.	Offer of possession	03.11.2022 [page 110 of reply]

B. Facts of the complaint:

3. That the Real Estate Project "Ashiana Mulberry" at Sector 2, Gurugram, Haryana (hereinafter referred to as "Project") was launched in the year 2014 and came to the knowledge of the complainants, through the authorized representative of the respondent. Relying upon representations and assurances of authorized representative of the respondent, the complainants chose to buy a unit in the aforementioned project and submitted an application form dated 04.11.2015 for allotment of the unit in the aforementioned project and made a payment of Rs. 5,00,000/- vide cheque no.725394 drawn on Punjab National Bank at Rudrapur, Uttrakhand branch. The said payment was acknowledged by the respondent vide receipt bearing no. REC-AML/00122/15-16 dated 13.11.2015.
4. That the complainants vide letter dated 21.11.2015 was provisionally allotted unit no. 508, 5th Floor, Tower T-2 (2 BHK +2 Toilets) in the said project having super built-up area of 1210 sq. ft. for a total sale price of Rs. 67,68,690/- inclusive of several charges such as the club

development charges, power backup installation charges, reticulated cooking gas installation charges, electrical substation charges, fire-fighting charges, External Development Charges, Infrastructure Development Charges, Interest Free Maintenance Security Charges, Advance Maintenance Charges. The complainants opted for possession linked plan for further payments.

5. That on 21.11.2015 itself, the buyer's agreement was executed between the parties. As per clause 11.2 the respondent promised to deliver the possession of the apartment within 39 months from the date of the agreement, i.e., by 21.02.2019. Clause 11.2 of the Agreement is stipulated below:

" The Company based on its present plans and estimates and subject to force majeure and all just exceptions and conditions beyond control of the company and subject to allottee making timely payments shall endeavor to complete the construction work of the said Apartment/ Building thereof within a period of 39 months from the date of this Agreement or start of construction after grant of Environment Clearance by MOEF whichever is later and a grace period of 6 (six) months ("Completion Date") and shall thereafter apply for grant of the Occupancy Certificate and on receipt of the same will offer possession of the said Apartment to the Allottee."

6. That the respondent at the time of execution of agreement assured and represented that it has obtained all statutory approvals but environment clearance of the project was obtained only on 22.01.2016

and the construction at the project site commenced from March 2016. The respondent cannot take benefit of its own wrong and thus due date of possession will be 39 months from the date of execution of apartment buyer agreement i.e 21.02.2019.

7. That the complainant met the demands raised by the respondent and made timely payments to the respondent. The said payments were acknowledged by the respondent vide payment receipts and also in the possession cum demand letter dated 03.11.2022. The complainants were hoping that they would get the possession of the apartment in time waited till Feb 2019. However, the respondent delayed the delivery of possession and also did not inform the complainants about status of project. Despite several calls and other correspondences, the respondent failed to give a satisfactory response to the queries and concerns of the complainant.
8. That the respondent time and again made false promises and assurances to the complainants that possession will be offered soon and they will be compensated for the delay in offering possession. The complainant made efforts to contact the respondent about the status of the project and the payment of delay possession charges, however, the respondent did not respond to the queries and kept delaying the date of offer of possession.
9. That after long delay of almost 4 years, the respondent vide letter dated 03.11.2022 informed the complainants that it had received the

Occupation Certificate dated 02.11.2022 from Directorate of Town & Country Planning, Chandigarh. To the utter shock and dismay of the complainants, the respondent did not make payment towards delay possession charges or adjust the same against the last installment as promised. Instead, the respondent raised several unreasonable additional demands under the following heads:

- (i) External Electrification Charges of Rs. 60,984/-
- (ii) Electric Meter Connection Charges of Rs. 13,552/-
- (iii) Advance Common Area Maintenance & Management Charges for 24 months of Rs. 1,19,936/-
- (iv) Advance towards Common Area Electricity [Grid Supply] charges for 24 Months of Rs. 24,000/-
- (v) Advance towards Common Area Electricity [Through DG Set] charges for 24 Months of Rs. 14,160/-
- (vi) Portable Water Supply Charges of Rs. 56,640/-
- (vii) Legal Charges of Rs. 23,600/-

Hence, the above-mentioned offer of possession has not only been made after a huge delay but in violation of the Real Estate (Regulation and Development) Act 2016.

10. That the respondent convened a meeting with home buyers of above said project on 06.11.2022 and complainants attended that meeting in the hope of possible solution to their grievances. Representatives of the respondent assured them that fresh offer of possession will be issued to all the homebuyers and their grievances will be considered but did not act on its promises and assurances. The complainants herein raised

their grievances in detail vide email dated 04.11.2022 and 27.11.2022 to which the respondent chose not to reply.

11. That the respondent deliberately and with a mischievous intent tricked the complainant through false promises and representations. The said dishonest intent of the respondent is amply evident from their entire conduct and omissions on part of the respondent set out hereinafter:-
- (a) Invalid Offer of possession subject to additional demands in violation of the Real Estate (Regulation and Development) Act, 2016;
 - (b) Deliberately committing an absolute breach of the promise to pay the delayed possession charges;
 - (c) Complete failure to keep the promised schedule of completion and delay without any valid justification;
12. That the respondent has made the offer of possession subject to unreasonable additional demands on the heads of certain external electrification, and maintenance charges which are not justified. This Hon'ble Authority in *Varun Gupta & Ors. v. Emaar MGF Land Ltd.*, Complaint No. 4031 of 2019
13. That the demand for electric meter connection charges and portable water supply charges is unjustified to the extent no proof has been rendered for the details of such payments.
14. That the external electrification charges cannot be charged from the allottees while issuing offer of possession letter, and legal charges amounting to Rs. 23,600/- are also exceeding the limit imposed by this

Hon'ble Authority as has been held in *Varun Gupta & Ors. vs. Emaar MGF Land Ltd., Complaint No. 4031 of 2019.*

15. That the said project is delayed by a period of 3 years and 11 months from the due date of possession on 21.02.2019, and hence, the respondent is liable to pay the allottee interest for delaying the possession in violation of the terms of the agreement. It has failed to adhere to promises and assurance which were made to the complainant regarding completion of the project and therefore respondent are liable to pay an interest of MCLR+2% (Per Annum) till date of actual possession.

C. Relief sought by the complainants:

16. The complainants have sought following relief(s):
- i. To set aside the offer of possession dated 03.11.2022 and withdraw demands not covered under the agreement or are illegal as per law.
 - ii. Direct the respondent to offer a valid offer of possession and handover actual vacant and physical possession of the above said flat.
 - iii. Direct the respondent to pay delayed possession charges from due date of possession till handing over of possession.
 - iv. Direct the respondent not to take any coercive steps against the complainants such as cancellation of allotment.
 - v. To Initiate the appropriate penal proceedings against the erring respondent as the registration of the project has been lapsed and

not renewed.

vi. Direct the respondent to pay litigation cost and expenses.

D. Reply by respondent:

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

18. That the complainants have failed to disclose the true facts that transpired with respect to buying the unit in respondent's project in the contents of their complaint. It is of utmost significance to apprise this Hon'ble Authority that Punjab National Bank (hereinafter referred to as "PNB" had advanced a loan for the sum of Rs. 50,00,000/- to the complainants for the purpose of buying unit in the project of the respondent. The complainants have failed to implead Punjab National Bank as necessary party to the captioned complaint despite the fact that the PNB had advanced a loan for the sum of Rs. 50,00,000/- to the complainants for the purpose of buying unit in the project of the respondent. Accordingly, the Punjab National Bank is the rightful and proper party, in view thereof, it shall play vital role in the decision of present dispute. In light of the above, the captioned complaint is bad for misjoinder of necessary parties and is liable to be dismissed at the threshold.

19. That the complainants out of their own free will and volition approached the respondent, and booked a unit bearing number C-508 on the 5th Floor, Tower-T2 having super built up area of 1210 sq. ft. in

the respondent's project "Ashiana Mulberry Phase-I" situated at Sector-02, Sohna, Gurgaon, Haryana. The complainants opted for possession/performance linked payment plan as per Schedule - B in order to make the payments of all the instalments by making payment of Rs. 5,00,000/-

20. That thereafter, the application form dated 04.11.2015 was submitted along with the payment of Rs. 5,00,000/- by the complainants and subsequently, a buyer agreement was executed between the parties on 21.11.2015 along with provisional allotment letter of even date. The total sale consideration of the said unit was Rs. 74,34,471/- out of which the respondent has received a sum of Rs. 57,84,793/- towards consideration. A sum of Rs. 16,49,678/- still remains outstanding which the complainants have failed to pay qua the allotment of the said unit. Additionally, the complainants are also required to make payment of the pending maintenance charges, deposits and other charges as per possession intimation letter dated 03.11.2022.
21. That the complainants were under an obligation to adhere to the payment plan opted for. Nevertheless, the complainants have defaulted in adhering to the payment plan. It is most respectfully submitted before this Hon'ble Authority that despite receiving various reminders and demand letter(s) through email and otherwise sent by the respondent demanding the outstanding payments, the complainants have failed to adhere to the said payment plan opted and hence, the

complainants have violated the Clauses 3.4 and 3.5 of the said agreement wherein they were liable to make timely payment of the outstanding instalments of the total sale consideration in order to obtain possession of the said unit. There is no doubt that the said act of the complainants is highly deplorable and amounts to breach of terms of the said agreement.

22. That it is essential to point out that the alleged unreasonable additional demands in form of charges indicated by the complainants in Para 11 of the complaint under response which were demanded vide possession intimation letter-cum-notice dated 03.11.2022 and which allegedly were not part of the agreement, were very much an essential part of the agreement and were chargeable under following clauses: 1. External electrification charges - Clause 15.10 of Agreement 2. Electric meter connection charges - Page 43 of the Agreement 3. Advance common area maintenance and management charges - Clauses 15.1 and 15.6 of the agreement 4. Advance towards common area electricity through grid supply - Clause 15.11 of the agreement 5. Advance towards common area electricity through DG set - Clause 15.11 of the Agreement 6. Portable water supply charges - Page 43 of the agreement 7. Legal charges - Page 43 of the agreement.
23. That it is abundantly clear that as per clause 11.2 of the said agreement, the respondent never promised to hand over the possession till February 2019. In actuality, Clause 11.2 of the said agreement states

that the promoter shall endeavour to complete the construction work of the unit within period of 39 months from date of the said agreement (plus grace period of 6 months), subject to application made for grant of occupation certificate and on receipt of the same shall offer possession of the said unit, which was in turn conditional upon the force majeure. Further, Clause 11.3 of the said agreement enumerates the "force majeure" clause wherein it has been laid down that completion date shall automatically be deemed to be extended if the delay in completion of construction of the project has occurred due to force majeure or circumstances beyond the control of the respondent company.

24. That the factors like non-availability of construction materials, electric power slow down, scarcity of water etc., are the substantial reasons which led to the delay in completing the construction of the project. Additionally, the construction of the project was stopped by Hon'ble National Green Tribunal pertaining to the factors of poor air quality. It is pertinent to point out here that due to stoppage of construction work, it may take another month's time to remobilize the construction work at project site. Thus, the calculation of period of completion for which the construction work was stopped shall be treated as zero period. Pursuant thereto, as per the terms of the agreement and the RERA registration, subject to timely payment by the Allottees as well as subject to force majeure, the construction of the unit was to be completed by 20.02.2019 plus 6 months grace period i.e. by 20.08.2019 ✓

unless there is delay due to "force majeure", court order etc. It is pertinent to mention herein that the construction of the project was stopped several times during the year 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "**MC Mehta Vs Union of India & Others**" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. The ban on construction caused irreparable damage to the delivery timelines and the real estate developers finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent. Furthermore, the impact of Covid-19 pandemic has been felt throughout the globe and more particularly by Real Estate industry. The pandemic completely disrupted the supply chain of the respondent therefore the delay if any, is not attributable to the respondent herein.

25. That in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of Diesel Generator set with effect from

15.10.2020, which has further led to delay in the construction being raised.

26. That even after the delay caused by the various allottees including the Complainants herein, in making the payment towards their respective units and various orders of the EPCA, HSPCB and the Apex Court, has finished the construction work of Phase-I of the said Project and even after delay by the DTCP, has received the Occupation Certificate on 02.11.2022 from the Director General, Town & Country Planning Department, Chandigarh.
27. That the respondent has always kept the complainants updated with respect to the development of surrounding area as well as of construction of the project. The respondent further repetitively apprised the complainants of the factors which have a visible adverse impact on the Real Estate Industry.
28. That the money received from the Complainants/allottees has been utilized towards the construction of the Project/Unit. It is further pertinent to mention here that during the last three years, Real Estate Sector has seen several events which severely impacted the Real Estate Sector. It is relevant to mention here that due to the current Pandemic COVID-19 situation the construction at the site was slowed down.
29. 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:

30. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 complainants at a later stage.

F. Findings on objections raised by the respondent.

F.1 Objection regarding delay due to force majeure circumstances

31. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority and delay in completion of project due to Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 11.2 of agreement which comes out to be 21.08.2019. Though there have been various orders issued by various competent authorities to curb the environment pollution, but these were for a short period of time and the fact that such type of orders are passed by the various competent Authorities from time to time was

already known to the respondent-builder. Further, as far as relaxation on ground of Covid-19 is concerned, grace period of six months as provided under clause 11.2 has been allowed to the respondent being unconditional and thus, no further grace period in this regard can be allowed to the respondent.

G. Findings on the relief sought by the complainants

Relief sought by the complainants:

G.I To set aside the offer of possession dated 03.11.2022 and withdraw any demands which are not covered under the agreement or are illegal as per law.

G.II Direct the respondent to offer a valid offer of possession and handover actual vacant and physical possession of the above said flat.

32. The complainants submitted that for a valid offer of possession the same should not be accompanied with illegal demands. However, as per offer of possession it has charged various illegal charges on pretext of electricity, electrification and maintenance charges such as
- a. External Electrification Charges of Rs. 60,984/-
 - b. Electric Meter Connection Charges of Rs. 13,552/-
 - c. Advance towards Common Area Electricity [Grid Supply] charges for 24 Months of Rs. 24,000/-
 - d. Advance towards Common Area Electricity [Through DG Set] charges for 24 Months of Rs. 14,160/-
 - e. Portable Water Supply Charges of Rs. 56,640/-

- f. Advance Common Area Maintenance & Management Charges for 24 months of Rs. 1,19,936/-
- g. Legal Charges of Rs. 23,600/-

33. The Authority observes that as per offer of possession dated 03.11.2022 on page no. 104 of complaint, the respondent raised various demands and the same are dealt by the Authority hereunder: -

a. External Development charges & External Electrification charges- External Development charges are charges required to be paid by the company to the relevant authorities and shall be payable by the buyer at such rates as may then be applicable and in such proportion as the sale area of the apartment bears to the total sale area of all the apartments in the project. The respondent is justified in demanding EDC & IDC but since these charges are payable on actual payment basis the respondent cannot charge a higher rate against EDC/IDC as actually paid to the concerned authority. Therefore, the respondent is directed to provided calculation of EDC & IDC to the complainants-allottee.

As far as external electrification charges are concerned, the same shall not be charged by the respondent-builder as the same are part of external development charges only and thus, are not be burdened twice on the allottee.

c. Electric Meter Connection Charges, Advance towards Common Area Electricity [Grid Supply] charges, Power Backup Installation Charges and Portable Water Supply Charges- The issue w.r.t electricity charges and water connection charges etc. were dealt under **Complaint No. 4031 of 2019 titled as Varun Gupta & Ors. v. Emaar MGF Land Ltd.**

These connections are applied on behalf of the allottees and they have to make payment to the concerned department on actual basis. In case instead of paying individually for the unit if the builder has paid composite payment in respect of the abovesaid connections including security deposit provided to the units, then the promoters would be entitled to recover the actual charges paid to the concerned department from the allottee on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants viz-à-viz the total area of the particular project. The complainant/allottees will also be entitled to get proof of all such payment to the concerned department along with composite proportionate to their unit before making payment under the relevant head.

It is also clarified that there shall not be any loading or additional charges for such connection in the name of incidental charges and sometime under the name and style of informal charges which is an illegal charge.

d. Advance Common Area Maintenance & Management Charges- The respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

e. Legal charges- The issue w.r.t legal charges has been dealt under ***Complaint No. 4031 of 2019 titled as Varun Gupta & Ors. v. Emaar MGF Land Ltd.*** and as per same there has been a cap of Rs. 15,000/- as nominal amount was envisaged which can be charged by the promoter-developer for any such expenses which it may have incurred for

facilitating the said transfer as has been fixed by the DTP office in this regard.

Further, it is a settled principle of law that the respondent shall not charge anything which is not part of buyer's agreement.

G.III Direct the respondent to pay delayed possession charges from due date of possession till handing over of possession.

34. In the present complaint, the complainants intend to continue with the project and are 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."

35. Clause 11.2 of the buyer's agreement 21.11.2015 provides for handing over of possession and is reproduced below:

"Clause 11.2

The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within a period of 39 (thirty-nine) months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months ("completion date") and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer position of the set apartment to the allottee..."

36. 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 thirty-nine months from the date of execution of agreement or grant of environment clearance by MOEF, whichever is later and grace period of 6 months. In the present case, the date of start of construction is not available on record and therefore, due date of handing over of possession is calculated from date of agreement. The buyer's agreement inter-se parties was executed on 21.11.2015; as such the due date of handing over of possession without considering grace period comes out to be 21.02.2019.

37. **Admissibility of grace period:** As per clause 11.2 of buyer's agreement dated 21.11.2015, the respondent-promoter proposed to handover the possession of the said unit within a period of thirty-nine months and six months grace period. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional and on account of certain circumstances such as Covid-19 pandemic which were beyond the control of the respondent. Therefore, as per clause 11.2 of the buyer's agreement dated 21.11.2015, the due date of possession comes out to be 21.08.2019.
38. **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.

39. 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.
40. 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., 21.11.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
41. 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;"

42. 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 them in case of delayed possession charges.
43. 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 11.2 of buyer's agreement executed between the parties on 21.11.2015, the possession of the subject apartment was to be delivered within a period of thirty-nine months and six months grace period from date of execution of such agreement or start of construction, whichever is later. Since date of start of construction is not available on record, the due date of possession is calculated from the date of execution of buyer's agreement i.e.; 21.11.2015, which comes out to be 21.08.2019. The respondent has offered the possession of the allotted unit on 03.11.2022 after obtaining occupation certificate from competent Authority on 02.11.2022.
44. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained from the competent Authority on 02.11.2022 and it has also offered the possession of the allotted unit to the complainants on 03.11.2022. Therefore, in the interest of natural justice, the

complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession practically, one 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. 21.08.2019 till the expiry of two months from the date of offer of possession or till actual handing over of possession and whichever is earlier. The respondent-builder has already offered the possession of the allotted unit on 03.11.2022. Thus, delay possession charges shall be payable till offer of possession plus two months i.e. 03.01.2023.

45. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.05.2017 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.08.2019 till offer of possession plus two months i.e. 03.01.2023; at the 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.

G.IV Direct the respondent not to take any coercive steps against the complainants such as cancellation of allotment.

46. Although the respondent has issued various demand letters and reminders but there is nothing on record that it has issued the

termination/cancellation of the subject unit. Hence, no direction to this effect can be issued.

G.V To initiate the appropriate penal proceedings against the erring respondent as the registration of the project has been lapsed and not renewed.

47. The aforesaid relief has not been pressed by the complainants during the course of proceeding. Hence, no direction to this effect are required to be issued.

G. VI Direct the respondent to pay litigation cost and expenses.

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

H. Directions of the authority

49. 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):
- a. The respondent shall pay interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.; 21.08.2019 till the date of offer of possession (03.11.2022) plus two months i.e. 03.01.2023; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - b. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - c. 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - d. The complainants are directed to pay outstanding dues, if any, in next two months and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 15 days and if no

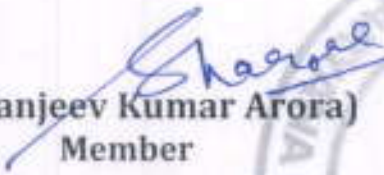


dues remains outstanding, the possession shall be handed over within four weeks from date of this order.

- e. 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 as per rule 16(2) of the rules.

50. Complaint stands disposed of.

51. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2023

HARERA
GURUGRAM