

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

**Date of decision: 15.12.2023**

NAME OF THE BUILDER		M/S PAREENA INFRASTRUCTURE PRIVATE LTD.	
PROJECT NAME		LAXMI APARTMENT	
S. No.	Case No.	Case title	Appearance
1	CR/5622/2022	Ratnesh Kumar V/S M/S Pareena Infrastructure Private Ltd.	Shri Prakash Dutt Jha Shri Prashant Sheoran
2	CR/5624/2022	Ravi Shankar Mishra V/S M/S Pareena Infrastructure Private Ltd.	Shri Prakash Dutt Jha Shri Prashant Sheoran

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**ORDER**

1. This order shall dispose of the two complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Laxmi Apartment situated at Sector-99 A, Gurugram being

developed by the same respondent/promoter i.e., M/s Pareena Infrastructure Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	"Laxmi Apartment" at sector 99A, Gurgaon, Haryana.
<b>Project area DTCP License No.</b>	Cannot be ascertained 106 of 2014 dated 13.08.2014 valid upto 30.05.2021
<b>Rera Registered</b>	Registered 25 of 2017 dated 27.07.2017 valid upto 14.09.2020
<b>Possession Clause: - 8.1. Possession</b>	
Except where any delay is caused on account of reasons expressly provided under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authorities, the company shall endeavour to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of environment clearance or within 4 years from the date of grant of sanction of building plans for the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.'	
<b>Date of approval of building plans:</b> 26.03.2015	
<b>Date of environment clearance:</b> 15.03.2016	
<b>Due date of possession: 15.09.2020 (Calculated from date of environment clearance i.e. 15.03.2016)</b>	
<b>Note:</b> Grace period of 6 months is included while computing due date of possession on account of Covid-19 are in term of HARERA notification dated 26.05.2020 allowing grace period from 01.03.2020 to 30.09.2020.	
<b>Occupation certificate:</b> 09.07.2021	



**Offer of possession: 16.07.2021**

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/5622/2022  Ratnesh Kumar V/S M/S Pareena Infrastructure Private Ltd  <b>DOF:</b> 06.09.2022  <b>Reply status:</b> 01.05.2023	203, 2 <sup>nd</sup> floor, Tower T4	424.833 sq. ft.	31.03.2016	15.09.2020  Calculated from the date of environment clearance + 6 months of grace period of Covid)	TSC: - Rs.17,49,330/-  AP: - Rs. 17,49,330	1. DPC
2.	CR/5624/2022  Ravi Shankar Mishra V/S M/S Pareena Infrastructure	704, 7 <sup>th</sup> floor, tower T1	424.833 sq. ft.	28.01.2016	15.09.2020  Calculated from the date of environment clearance	TSC: - Rs.17,49,330/-  AP: - Rs. 17,49,330	1. DPC

Private Ltd.					+ 6 months of grace period of Covid)		
<b>DOF:</b> 06.09.2022							
<b>Reply status:</b> 01.05.2023							

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/5622/2022 Ratnesh Kumar V/S M/S Pareena Infrastructure Private Ltd** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges.

**A. Project and unit related details**

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

**CR/5622/2022 Ratnesh Kumar V/S M/S Pareena Infrastructure  
Private Ltd.**

S. N.	Particulars	Details
1.	Name of the project	"Laxmi Apartments" at sector -99, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	Cannot be ascertained
4.	DTCP license no. and validity status	106 of 2014 issued on 13.08.2014 valid up to 30.05.2021
5.	RERA Registered/ not registered	<b>Registered</b> vide no. 25 of 2017 issued on 27.07.2017 valid up to 14.09.2020
6.	Unit no.	203, 2nd floor, tower T4 [pg. 43 of complaint]
7.	Unit area admeasuring	424.833 sq. ft [pg. 43 of complaint]
8.	Date of apartment buyers agreement	31.03.2016 [pg. 42 of complaint]
9.	Date of approval of building plans	26.03.2015 [pg. 43 of complaint]

10.	Date of environment clearance	15.03.2016 [pg. 28 of reply]
11.	Possession clause	<p><b>8.1 Expected Time For Handing Over of Possession:</b></p> <p>Except where any delay is caused on account of reasons expressly provided under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authorities, the company shall endeavour to complete the construction and handover the possession of the said apartment <b>within a period of 4 years from the date of grant of environment clearance or within 4 years from the date of grant of sanction of building plans for the project, whichever is later</b>, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.</p>
12.	Due date of delivery of possession	15.09.2020 [calculated from the date of environment clearance] [Including grace period of 6 months in lieu of covid 19]
13.	Total sale consideration	₹ 17,49,330/- [pg. 46 of complaint]
14.	Amount paid by the complainant	₹ 17,49,330/-



		[as alleged by the complainant at pg. 5 of complaint]
15.	Occupation certificate	09.07.2021 [pg. 25 of reply]
16.	Offer of possession	16.07.2021 [pg. 15 of complaint]

### **B. Facts of the complaint**

The complainant has made the following submissions in the complaint: -

8. That the complainant was approached by the sales representative of the company, who made tall claims about the project as one of the best projects in the country where lower income group person can get his home. The complainant was lured to pay cost of application to be a member of lucky draw to be held for the allotment. The complainant arranged amount of Rs 87,467/- from bank on interest at the time of application and took part in the lucky draw.
9. That the petitioner after letter of allotment of flat issued to him on 09 Nov 2015, applied for housing loan from SBI to the tune of Rs. 15,74,000/- which was approved in the Month of Mar 2016 and disbursed to the respondent as when the demand was raised by the respondent.
10. That the complainant paid all the amount agreed by him as per payment plan. The first payment after allotment of flat was made late due to late sanction of Home Loan through SBI and company had charged Interest about Rs 13000/- for three months which was also illegal because works services had not started on site physically and company could not get environment clearance due to which work started late. The same has been



- asked through legal notice dated 07 Aug 2021 and company failed to reply the month in which construction actually started and claim of interest has been called time barred as it has happened more than three years back.
11. That besides this, an amount of Rs. 14000/- has also been asked by the respondent to pay as Interest for delayed payment may be in the Year 2018/2019 which became time bar as of now and cannot be claimed by the respondent as per reply of the notice by the counsel of the respondent similarly as amount deposited by the Petitioner became time bar for claim.
12. That the builder buyer agreement was executed on 31 Mar 2016 between the complainant and the respondent. Para H of the BBA states that the allottee has thoroughly inspected all the relevant deeds, documents, approvals, licenses and authorizations in respect of the company but in real, company had not shown its environment clearance obtained from the authority concerned which was asked by him orally and subsequently asked through mails. Building Plan was shown through a brochure wherein the area of the flat was fixed and no variation in area was communicated to him from starting to work at site in 2016 and before offering letter of possession in Jul 2021. He has queried from other allottees also and they are also have observation about the company on this issue.
13. That para 3 of BBA under heading sale purchase agreement states that the petitioner has to pay a total of Rs 17,49,330.50/-. Apart from it, he is agreed to pay any applicable taxes, cess, levies or assessment including VAT, Service Tax etc. The BBA executed and made in favour of the respondent in most of the aspects which can be seen by the respected authority while going through any para of the agreement as there is no





scope for the buyer to deviate from any angle. In this series, it can be seen that EDC is being charged by the company from the allottees.

14. That building plans are made by authorized engineers / architects who draws the plan as per requirement projected by the developer/builder on the available/earmarked land for it and exact calculation along with proposed flat size is being given to the developers. Accordingly, pillars are planted as per calculated area and common areas of the building. Company failed to inform the reason for increased carpet area, if any, which has not been shown to the complainant during his visit to site on 02 Aug 2021 to see the status of work services completed upto that date.
15. That the company had agreed to handover complete flat within 4 years which has already expired in month of Mar 2020. The respondent has neither informed any delay for any reason nor informed any government restriction on work services.
16. That when the petitioner visited the site on 02 Aug 2021 he saw that work services in kitchen and bathroom were not completed. There was no water connection available on that day in his flat and on asking from respondent about the reason, he told that all balance work services will be completed when he pays the balance amount.
17. That the complainant do not intend to withdraw from the project. As per the obligations of the respondent/promoter under section 18 of the Act 2016 read with Rules 15 and 16 of the rules, 2017, it has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. The respondent has neglected its part of obligations by failing to offer a legitimate, rightful, lawful and legal

possession of the flat in time. The Petitioner reserve their right to seek compensation from the promoter.

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

18. The complainant has sought following relief(s):

- I. Direct the respondent to pay interest for every month of delay in offering the possession of the flat since 01.04.2020 up to the date when the company offers the completed flat ready for living in front of this authority, against the amount taken from the complainant for the sale consideration for the flat along with additional charges at the prescribed rate as per the Act, 2016.
- II. Direct the respondent to issue fresh offer of possession of flat completed in all respect as agreed in BBA.
- III. Direct the respondent to pay cost of the legal proceedings.

19. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 by the respondent**

The respondent has contested the complaint on the following grounds.

20. That the respondent has already received occupation certificate qua the unit/tower in question and possession of the allotted unit has already been offered to the complainant.
21. That respondent completed the construction within agreed time frame and applied for occupation certificate. The occupation certificate was received by the respondent and offered possession and demanded amount as per agreed terms and conditions. During the phases when construction



work was going on, the respondent faced several difficulties yet completed the same within the time schedule. Now when the construction is complete and occupation certificate has been received, the complainant has no right seek delayed possession charges as there is no delay in completion of construction on part of respondent.

22. That the license for the said project was granted by the concerned authority on 14-08-2014 and the building plans for the said project were sanctioned on 26.03.2015. The environmental clearance for the said project had been granted by the concerned authority on 15.03.2016.
23. That the said project is being developed under the affordable housing policy, 2013. In terms of that policy, the project was required to be completed within a period of 4 years. This period was to commence from the date of sanction of building plans or grant of environment clearance, whichever is later and was to remain subject to force majeure circumstances.
24. That the prescribed period of 4 years is subject to force majeure circumstances. There were a number of court orders, notifications and other circumstances completely beyond the reasonable control of the respondent which directly impeded the ability and even its intention to continue with the development and construction work of the said project.
25. That on account of various notifications and judicial orders, the development and construction work of the said project was impeded, stopped and delayed. The total number of days during which despite of being absolute willingness on the part of respondent, it could not raise construction is for 141 days. Thus, that period should be added to the



period of 4 years to calculate the due date of completion of project and offer of possession of the allotted unit.

26. That account of corona virus pandemic, the authority granted additional time of six months for completion of project in year 2020 and additional 3 months in year 2021 from 01-04-2021 to 30-06-2021. Even the Town and Country Planning Department, Haryana extended the period of 6 months from 01.03.2020 to 30.09.2020 and further of 2 months from 01.04.2021 to 31.05.2021 and imposed moratorium for the period qua all the real estate projects for all purpose and intents as stipulated in those notifications and the present project is squarely covered under said notifications and is entitled for benefit provided in said notifications.
27. That on 13th of March 2020 the respondent applied for obtaining an occupancy certificate for the said project from Town & Country planning Haryana. That as is the norms and rules of Town & Country planning Department, Haryana, an endorsement/receipt was given by the aforementioned department regarding the application which had been moved by the respondents for obtaining the occupancy certificate.
28. That it remains an unfortunate but undeniable fact that merely 7 - 8 days after the applying for occupancy certificate the entire country was in the grip of coronavirus pandemic. The pandemic escalated to such a level that the central government was constrained to issue orders of national lockdown from 25th of March 2020. Even though the orders for national lockdown came to be effective from 25th of March 2020 however the effects of pandemic had become apparent well before that. No citizen including the employees and officers of Town & Country planning Haryana remained unaffected from the pandemic. That despite of the completion of



the project and an application being moved in this regard for obtaining the occupancy certificate, considerable procedural delays occurred on the part of Town & Country planning Haryana. It is submitted that even though the aforementioned department is already struggling with department delays on various accounts but regarding the application for which had been moved by the respondent, the prevailing pandemic was perhaps the major reason for the delay which occurred at the part of Town & Country planning Haryana in granting the occupancy certificate. That for all legal purposes the project was complete and therefore any allegation on the part of the allottees regarding there being any delay in the completion of project is misconceived. It is submitted that the process has been set for grant and issuance of occupancy certificate by the Town & Country planning Haryana. The only role in this entire process which lies on the part of the developer in this case the respondent is moving an application for grant of occupancy certificate. The respondent complied with its part by not only completing the project but applying for the occupancy certificate now if there occurs any delay on the part of the Town & Country planning Haryana in granting or issuing the occupancy certificate then the time period exhausted between the date of application for grant of occupancy certificate and the date of issuance of occupancy certificate cannot be considered a 'delay' in completion of the project. Thus absolutely no claim of the allottees is made out regarding payment of delayed possession charges. That even otherwise the occupancy certificate was deemed to be granted under the provisions of clause number 4.10(5) of Haryana building code, 2017. Thus in these circumstances there is no delay at all delivery of the project. That on 15-



10-2020 Haryana government vide its extraordinary gazette notification amended THE HARYANA LIFTS AND ESCALATORS ACT and make it mandatory to install "Emergency Rescue devices (ERD)" for lift in high rise building. It is submitted that installing of Emergency rescue device in already installed lift is a time and money consuming work. That above stated notification qua ERD also proved to be a great hurdle in getting occupation certificate. It is submitted that soon after first moratorium period was over and above stated notification came in force and it became mandatory to install ERD systems in Lifts and to obtain Lift NOC after installing ERD systems. That said notification proves to be an injunction like situation, Since at the time said notification came in -force no company/vendor in northern India had the experience or capability of installation of ERD system. That installation of ERD system is a complex process and involves specialized hardware and specially customized software to run the ERD system. That Since it became mandatory to install ERD systems, respondent started looking for any vendor/company who has experience and capability of installation of ERD systems. However even after extensive search respondent was not able to find out any such vendor or company in NCR or neighboring states, rather such systems were not available in whole of the northern , eastern and western India at that point of time. That ultimately respondent able to find a company namely Renutron Power solutions Pvt. Ltd, and after contacting with said company they introduced the respondent about their Dealer in Gurgaon namely Modern business solutions in Jan 2021 who apprised that a Bangalore based company has experience in ERD systems. That though the vendor namely Modern business solutions was Gurgaon based but all the



necessary equipments were arranged by it through saidkohlapur based company namely Renutron Power solutions PVT. Ltd. That after acquiring knowledge of the fact that ERD system can be installed now, the respondent immediately asked the said vendor to send the quotations and after receiving quotation respondent immediately started working on the same. That quotation of said vendor is Annexure R5. That after completion of work the LIFT NOC was granted to respondent on 06-04-2021, however due to outbreak of second wave of COVID 19, DTP again imposed moratorium period for 01-04-2021 till 31.05.2021 and even RERA also vide its notification dated 02-08-2021 grant extension of 3 months from 01-04-2021 till 30-06-2021. That soon after said time period was over the DTP granted respondent occupation certificate and immediately the possession was offered to concerned allottees. Thus from these facts it is clear that there is not delay in offering of possession.

29. That after applying for the occupancy certificate and in fact during the subsistence of zero period, certain notifications and policies were issued by the state government whereby changes were made in the manner in which the lifts installed in the project were to work. On account of this policy certain work was again undertaken by the respondent however the same was restricted only to implementation of the aforementioned policy relating to installation of ERD in lifts. That policy qua ERD was issued without prior intimation and thus despite of policy vendors who may provide ERD device were not available. Thus this fact will also have to be considered while assessing the project.

30. Thus keeping in view of above stated facts and circumstances it is clearly established that there is no delay on the part of Respondent and the

possession as been offered by the respondent completely within the agreed time frame.

31. That the allottees like present one without knowing actual state of affairs and without getting acquaintance with the problem faced by respondent filed the false and frivolous complaints.

32. That there are several other orders and notifications which caused delay in the construction of project and were beyond the control of developer and the same are as follows:

33. That the additional charges levied by the respondent are as follow:

- Additional Area: That the authority itself vide its notification dated 07-05-2021 extended the area to be included in carpet area and due to said notification, the area of unit in question stood extended.
- Administrative Charges: Fixed @ Rs. 15,000 by district town planner vide order dated 02-04-2018. Even as per clause 4.1 to 4.9 of the agreement, the allottee agreed to pay all kind of taxes, charges, levies, cess, assessment.
- Labour Cess: Calculated on pro-rata basis. Total labour cess paid by respondent are Rs. 72,63,988/- and total area of project as far as type 1 & type 2 units comes to 451,853.58 sq. ft. Thus, the pro-rata cess per sq. ft. comes to Rs. 16.08 per sq. ft.
- Meter connection charges: The total cost of installing electricity meters was 672,954 + 79,29,954 = 86,02,908/- and the total number of units in laxmi apartment is 804, Thus, the pro-rata cost of each unit comes to Rs. 10,700/. The meter installed in each unit are prepaid meters.
- EEC [external electrification charges & emergency rescue device charges]: The total cost of electrification was Rs. 2,93,36,329/- and total





area is 4,81,269.21 sq. ft. Thus, on pro-rata basis, the per unit cost comes @ 60.96 per sq ft.

- IFSD (interest free security deposit) & maintenance charge: As per clause 10 of the agreement, maintenance work and services in relation to the common area and facilities are to be provided by the company for 5 years. However, the same are not free in any manner at all. The promoter was only under its liability to provide services and cost of services is the duty of allottees only, Moreover the authority recently in its order in EMMAR cases clarified that the promoter is entitled to charge IFSD.
- Advance electricity consumption deposit: The meters installed in each unit are prepaid meters and in prepaid meter, a person has to pay in advance charges and same are deducted as per usage. Thus, the amount which was demanded is to be deposited in advance against consumption and same would be utilized by allottee himself as per his usage after taking over of possession of the unit.

34. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

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

35. 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**

36. 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**

37. 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) 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.

38. 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**



- I. Direct the respondent to pay interest for every month of delay in offering the possession of the flat since 01.04.2020 up to the date when the company offers the completed flat ready for living in front of this authority, against the amount taken from the complainant for the sale consideration for the flat along with additional charges at the prescribed rate as per the Act, 2016.
- II. Direct the respondent to issue fresh offer of possession of flat completed in all respect as agreed in BBA.

39. In all the complaints, the complainant intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

40. Clause 8 of the apartment buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"Clause 8- 8.1 Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/ completion certificate from the competent authorities, the company shall endeavour to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of environmental clearance or within 4 years from the date of grant of sanction of building plans for the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.*

41. The authority has gone through the possession clause of the agreement. 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 the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is 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 promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
42. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.

43. **Admissibility of grace period:** The apartment buyer agreement was executed between the parties on 31.03.2016 and the environment clearance for the project was received by the builder on 15.03.2016. So as per clause 8.1 of the agreement, the due date of handing over of possession is to be counted 4 years from the date of sanction of building plans or environment clearance whichever is later. As the environment clearance was received by the promoter on 15.03.2016, so, the due date for handing over the possession as per clause 8.1 of the agreement comes to 15.03.2020. There was a pandemic in March 2020 and all the activities including construction works were closed. So, the authority in pursuance to notification dated 26.05.2020 issued by the State of Haryana allowed a grace period of 6 months. Thus, in this way, the due date of handing over possession of the allotted unit in the above-mentioned projects comes to 15.09.2020.

44. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) 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.*

45. 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.

46. 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., 15.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

47. 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—*

*the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

48. 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 8.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). As such the due date of handing over of possession comes out to be 15.09.2020. However, no interest shall be charged from the complainant in case of delayed payment during this 6 months COVID period from 01.03.2020 to 01.09.2020.

49. 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 was granted by the competent authority on 09.07.2021. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 15.09.2020 till the expiry of 2 months from

the date of offer of possession (16.07.2021) plus two months (i.e., 16.09.2021).

50. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.09.2020 till offer of possession plus two months (i.e., 16.09.2021), 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.

51. Further the complainant during the proceedings has raised various issues such as labour cess and others. Such issues were not pressed in the relief sought by the complainant in his complaint. For redressal of such issues the authority has passed detailed order in CR/4068/2022 titled as Pradeep Kumar Vs. Pareena Infrastructure Pvt. Ltd.

**III. Direct the respondent to pay cost of the legal proceedings.**

52. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the





complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

**G. Directions of the authority**

53. 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 physical possession of the subject unit within 60 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- 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 the complainant to the respondent from the due date of possession 15.09.2020 till offer of possession i.e., 16.07.2021 plus two months i.e., upto 16.09.2021 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iv. 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.

- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. 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.

54. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

55. The complaints stand disposed of.

56. Files be consigned to registry.



  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2023

**HARERA**  
GURUGRAM