

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

Complaint no. : 5677 of 2022  
Complaint filed on : 23.08.2022  
Date of decision : 09.01.2024

Kanika Sharma  
R/o: A-737, Sarita Vihar, New Delhi

**Complainant**

Versus

Almond Infrabuild Pvt. Ltd.  
Address at: 711/92, Deepali, Nehru Place, New  
Delhi-110019

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member  
Member  
Member**

**APPEARANCE:**

Shri Saurav Kumar  
Sh. Vinayak Gupta

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name of the project	"ATS Tourmaline", Sector- 109, Gurgaon
2.	Nature of project	Group housing project
3.	DTPC License no.	250 of 2007 dated 02.11.2007 Valid till 01.11.2019 Licensed area 19.768 acres Name of licensee Raj Kiran & 2 others
4.	RERA registered/not registered	Registered vide registration no. 41 of 2017 dated 10.08.2017
	Validity status	10.08.2023
5.	Allotment letter dated	15.09.2014 [As per page no. 22 of complaint]
6.	Tri-partite agreement dated	15.09.2014 [As per page no. 23 of complaint]
7.	Unit no.	3171 on 17 <sup>th</sup> floor of tower 03 [As per page no. 34 of complaint]
8.	Unit area admeasuring	1750 sq. ft. [Super area] [As per page no. 34 of complaint]
9.	Date of apartment buyer agreement	15.09.2014 [As per page no. 31 of complaint]
10.	Payment plan	Subvention payment plan [As per page no. 65 of complaint]
11.	Total sale consideration	Rs. 1,47,06,250/-

		[As per payment plan annexed as schedule IV on page no. 65 of complaint]
12.	Amount paid by the complainant	Rs. 1,54,05,088/- [As alleged by the complainant on page no. 20 of complaint]
13.	Possession clause	<b>Clause 6.2</b> <i>The Developer endeavour to complete the construction of the apartment <u>within 42 months from the date of this agreement (completion date)</u>. The company will send possession notice and offer possession of the Apartment to the applicant as and when the company receives the occupation certificate from the competent authority.</i>
14.	Due date of possession	15.03.2018 [Calculated from the date of agreement i.e., 15.09.2014]
15.	Occupation certificate	09.08.2019 [As per page no. 33-34 of reply]
16.	Offer of possession	09.08.2019 [As per page no. 31 of reply]
17.	Email by respondent to complainant w.r.t handing over of possession	21.08.2020 [As per page no. 125 of complaint]
18.	Request by complainant w.r.t handing over of possession	05.12.2020, 09.12.2020, 15.12.2020, 29.07.2021, 08.08.2021 & 24.01.2022 [As per page no. 126-128 of complaint]
19.	Handover of the unit	08.10.2023 (Document placed in yellow file)

**B. Facts of the complaint**

3. The complainants made the following submissions in the complaint:

- i. That the complainant, with a view to secure a place of dwelling

- in developed area, decided to purchase an apartment in the project of the respondent. Accordingly, on 24.07.2014 complainant submitted application for allotment of apartment in "Tourmaline", Sector 109, Gurugram.
- ii. That on 15.09.2014 the complainant was allotted Type "D" flat on 17<sup>th</sup> Floor in Tower No.3 bearing no. 3171 in "ATS Tourmaline" admeasuring super built up area of 1750 Sq Ft., inclusive of built-up area of 1466 sq. ft along with 2 two car parking space.
  - iii. That the complainant and the respondent on 15.09.2014 entered into a tripartite agreement with HDFC Limited for a loan of Rs. 1.14 crores under subvention scheme. The complainant has also repaid the entire loan amount which is evident from the letter dated 04.02.2019 issued by HDFC.
  - iv. That on 15.09.2014, the buyer's agreement was executed between the parties. Till the date of execution of the agreement, the complainant had already paid Rs. 19, 75,764/-. Vide Clause 6.2 of the agreement, the respondent agreed to complete the construction within 42 months from the date of agreement i.e., by 15.03.2018. It is submitted that the stipulated period of handing over the possession admittedly expired on 15.03.2018.
  - v. That the respondent vide email dated 12.08.2019 offered the possession of the apartment with a delay of more than 17 months without any compensation for delay in offering possession. Along with the email dated 12.08.2019, the respondent provided a letter offering possession dated 09.08.2019, and a demand letter of Rs. 1,52,048/-. It was also

- informed that upon payment of the aforesaid dues, the respondent will take another 90 days for final finishing of the unit.
- vi. That vide email dated 27.08.2019, Mr. Braham Prakash (CRM representative of respondent) offered a meagre and unjustified amount of Rs. 1,46,471/- towards compensation for delay in handing over possession of the unit.
- vii. That vide email dated 19.09.2019, the complainant protested against the offer of unreasonable compensation for the delay in possession of the unit. It was stated that since project is registered with HRERA and in terms of HRERA read with HRERA rules, compensation @10.75% p.a is payable for the period of delay. It was further informed by the complainant that there was a delay of 17 months, and accordingly, the complainant was entitled to compensation of Rs.23, 22, 49,702/- under the aforesaid provisions, at that point of time.
- viii. That, upon receiving no response from the respondent, the complainant vide letter dated 03.10.2019 again requested the respondent to pay compensation as per the RERA provisions instead of granting meagre compensation that also without any calculations or justifications.
- ix. That the complainant made full and final payment of the final demand raised by the respondent along with offer of possession. That the complainant along with letter dated 03.10.2019 enclosed Cheques for amount of Rs. 1, 55,581/-. The complainant clearly stated that aforesaid payment was made under protest and without prejudice to the right to recover

- compensation under the provisions of HARERA and HARERA Rules.
- x. That upon payment of the final demand, on 11.10.2019 the complainant requested to update on the finishing work and handover of physical possession of the unit. Repeated reminders were sent by the complainant to the respondent seeking possession of the unit, however, the respondent chose not to provide any information to the complainant.
- xi. That while offering possession, the respondent promised that the final finishing of the apartment will be done within 90 days of payment of the final demand. It is submitted that the complainant on 03.10.2019 has paid all the outstanding dues. Thus, the respondent was obligated to hand over the possession of the unit after completing the final finishing, earliest by 02.01.2020. However, to the surprise of the complainant, the respondent vide letter dated 11.02.2020, the respondent sought few more month to complete the final finishing. It is submitted that the respondent failed to hand over the possession within promised 90 days from date of final payment by the complainant.
- xii. That after expiry of approximately 10 months from date of making final payment by the complainant, the respondent vide letter dated 21.08.2020, sought more time to complete the finishing and handover of possession. That the respondent has never adhered to the promises made failed to adhere to the terms of the agreement. It is pertinent to mention herein that the respondent after taking the entire sale amount has failed to provide the physical possession of the unit with complete

- specification as envisaged in Schedule II of the agreement.
- xiii. That the complainant vide emails dated 05.12.2020, 09.12.2020, 15.12.2020, 29.07.2021, 08.08.2021 and 24.01.2022 expressed her anguish and frustration due to the delay tactics adopted by the respondent in handing over the physical possession of the apartment after taking the entire sale consideration.
- xiv. That throughout the entire correspondence exchanged between the parties regarding stage of construction and completion of the project, the respondent continued to raise demands for payment of the instalments even though it was evident that possession would not be given on time, and the complainant continued to make timely payments of the same diligently as and when called upon to by the respondent from time to time.
- xv. That firstly, the respondent failed to handover the possession of the unit within the stipulate period of 42 months from date of the agreement, i.e by 15.03.2018. Secondly, the respondent again failed to complete the final finishing work within 90 days from the date of making final payment.
- xvi. That despite receiving the entire sale consideration on 03.10.2019, the respondent has failed to handover the physical possession of the unit till date. Therefore, the respondent is liable to give compensation for delay in handing over the possession from the stipulated time period in the unit, i.e. 15.03.2018 till actual physical possession is handed over.

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

4. The complainant is seeking the following relief:

- i. Direct the respondent to handover the physical possession of the unit.
- ii. Direct the respondent to pay interest at prescribed rate for the delayed period of handing over possession.
- iii. Direct the respondent not to charge any holding charges.
- iv. Direct the respondent not to charge any maintenance charges till the physical possession is handed over to the complainant.
- v. Direct the respondent not to raise any demand which is not stipulated in the apartment buyer agreement.
- vi. Direct the respondent to pay cost of litigation.

**D. Reply filed by the respondent**

5. The respondent no.1 had contested the complaint on the following grounds:
  - i. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute this Clause 21.1 of the buyer's agreement.
  - ii. That the complainant, after checking the veracity of the project namely, 'ATS Tourmaline', Sector 109, Gurugram had applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the documents executed by the parties to



the complaint. It is submitted that based on the application of the complainant, unit no. 3171, Tower no. 3 was allotted to the complainant by the respondent.

- iii. That the buyer's agreement was executed on 15.09.2014. It is respectfully submitted that the complainants have consciously and voluntarily executed buyer's agreement dated 15.09.2014 after reading and understanding the terms and conditions incorporated therein to their full satisfaction.
- iv. That no objections against the terms of the documents including the agreement were raised by the complainant with the respondent. The complainant had made the booking only after reading, understanding and verifying the terms and conditions stipulated therein. The complainant had satisfied himself about the right, title, location and limitation in the project of the respondent and had accordingly applied vide application dated 24.07.2014.
- v. That it was agreed that as per clause 4 of the buyer's agreement, the sale consideration of Rs. 1,47,06,250/- was exclusive of other costs, charges including but not limited to maintenance, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities. As per the same clause of the buyer's agreement, timely payment by the complainant of the basic sale price and

other charges as stipulated in the payment plan was to be the essence of the agreement.

- vi. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. The possession of the unit was subject to the occurrence of the force majeure events.
- vii. That it is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:
- (I) Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months we.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor

could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During Demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government. Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.

(II) Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders

with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of the respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession.

(III) Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

(IV) Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which

the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

(V) Restraint order dated 23.04.2014 passed by the SDM Kapashera: That it is submitted the respondent company has been constructing the project in a timely manner and as per the terms of the agreement for sale and no default whatsoever has been committed by it. It is pertinent to mention herein that the project was badly affected on account of a restraint order dated 23.04.2014 passed by the SDM Kapashera on the basis of a report submitted by Halka Patwari, Kapashera that the respondent was making encroachment on the Gram Sabha Land. In the restraint order dated 23.04.2014, it was stated that a case titled as Dilbagh Singh vs GNCTD of Delhi pertaining to the land in dispute was pending before the Delhi High Court and SDM, Gurugram was requested to conduct joint demarcation. It is pertinent to mention herein that the order passed by the SDM Kapashera is covered under the ambit of the definition of 'Force Majeure Event' as stipulated in the mutually agreed terms of the agreement for sale.

viii. That the respondent after completing the construction of the unit in question, applied for the grant of the occupation certificate on 19.03.2018 and the same was granted by the concerned

authorities on 09.08.2019. The respondent offered the possession of the unit to the complainant vide letter dated 09.08.2019. The complainant was intimated to remit the outstanding amount on the failure of which the delay penalty amount would accrue. The complainant was bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges.

- ix. Written documents have been filed by the respondent and the same has been taken on record.
- x. Copies of all the documents have been filed and placed on record.

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

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

##### **E.1 Territorial jurisdiction**

7. As per notification no. 1/92/2017-ITCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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**

8. Section 11(4)(a) of the Act 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.*

9. 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 as per provisions of section 11(4)(a) of the Act 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.I Objection regarding complainant is in breach of agreement for non- invocation of arbitration.**

10. The respondent raised an objection that the complainant has not invoked arbitration proceedings as per application form which

contains a provision regarding initiation of arbitration proceedings in case of breach of agreement. The following clause 57 has been incorporated w.r.t arbitration in the application form:

*"All or any dispute that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act, 1996, and any statutory amendments/modification thereto by a sole arbitrator who shall be mutually appointed by the Parties or if unable to be mutually appointed, then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties"*

11. The respondent contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention



to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506* and followed in case of *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. A similar view was taken by the Hon'ble apex court of the land in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* and has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, that the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

12. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is

well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

#### **F. II. Objection regarding delay due to force majeure**

13. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as, demonetization, orders passed by the national green tribunal, non-payment of instalment by different allottee of the project, and orders passed by the SDM of Kapashera but all the pleas advanced in this regard are devoid of merit. Though some allottee may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.
14. 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, demonetization which was partially lifted but all the

pleas advanced in this regard are devoid of merit. The agreement to sale was executed between the parties on 15.09.2014 and as per terms and conditions of the said agreement for sale dated 15.09.2014, the due date for handing over of possession was 15.03.2018. The events such as demonetization and orders by the NGT to protect the environment, were for a shorter duration of time and were not continuous. Hence, in view of aforesaid circumstances no grace period can be allowed to the respondent-builder. Moreover the complainant has already paid an amount of Rs.1,54,05,088/- against total sale consideration of Rs. 1,47,06,250/- which is more than the sale consideration, thus the plea that the project is delayed on account of non-payment of allottees is devoid of merits and rejected. Thus, the promoter-respondent cannot be given any leniency on bases of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

#### **G. Findings of the authority**

##### **G.1 Direct the respondent to handover the physical possession of the unit.**

15. The complainant alleged that although the unit was offered by the respondent on 09.08.2019 but the possession of the same was yet not handed over to them.

16. In the present case, the respondent - builder has offered possession

of the allotted unit on 09.08.2019 after obtaining occupation certificate. The complainant has already paid an amount of Rs.1, 54,05,088/- which is more than the sale consideration and various request of the complainant vide email annexure as C-6 on page no. 126-128 of the complaint .

17. Vide proceedings dated 31.10.2023 the counsel for the respondent stated at bar that the physical possession has been handed over on 08.10.2023 and has placed the necessary documents as well. The same letter is signed by both the parties.

**G.II Direct the respondent to pay interest at prescribed rate for the delayed period of handing over possession.**

18. 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."*

19. Clause 6.2 of the buyer's agreement provides time period for handing over the possession and the same is reproduced below :

## 6.2 Completion of construction

The Developer endeavour to complete the construction of the apartment within 42 months from the date of this agreement (completion date). The company will send possession notice and offer possession of the Apartment to the applicant as and when the company receives the occupation certificate from the competent authority.

## 20. Admissibility of delay possession charges at prescribed rate of

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

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

21. The legislature in its wisdom in the subordinate legislation under 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.

22. 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., 09.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.85%.

**23. Rate of interest to be paid by the complainants in case of delay**

**in making payments-** 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;"*

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the

respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

25. The authority observes that the due date of possession as per the apartment buyer's agreement was 15.09.2014. In the present case, the occupation certificate was issued by the concerned authority on 09.08.2019 and thereafter, the possession of the subject unit was offered to the complainant on 09.08.2019.
26. Here, it is pertinent to note that despite making payment of more than the consideration as demanded by the respondent, the respondent failed to handover the possession of the subject unit to the complainant. The complainant has fulfilled their obligation to make payment of the outstanding dues and in spite of that she was deprived of possession of the subject unit by the respondent for the reasons best known to him. The complainant in need of getting the handover of her unit wrote various emails to the respondent and the same are placed on record from page 126-128 of the complaint.
27. Vide email dated 11.02.2020 and 21.08.2020 the complainant was intimated by the respondent that the finishing work is not yet completed and will take some time for completing of finishing work and handing over the possession of the unit. It is only through letter dated 08.10.2023, that the respondent had intimated the complainant that the subject unit is ready for handover and physical possession/keys be handed over to the complainant. This implies

that the subject unit was not ready prior to the said date. The respondent remained silent for six months i.e., from 09.08.2019 (date of offer of possession) till 11.02.2020 and even after email dated 11.02.2020 and 21.08.2020 the respondent gave the key handover letter on 08.10.2023 after a very long delay because of which the allottee suffered for her unit booked in the project of the respondent, despite the complainant having already paid an amount of Rs.1,54,05,088/-out of total sale consideration of Rs. 1,47,06,250/-

28. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 6.2 of the buyer's agreement executed between the parties on 15.09.2014, possession of the booked unit was to be delivered by 15.03.2018. Vide proceedings dated 09.01.2024, the counsel for the respondent stated at bar that the possession of the unit has been handed over to the complainant on 08.10.2023 only and the same may be considered as the date of offer of possession as well.

29. The authority hearing the parties at length and to balance the rights of both the parties, comes to a conclusion that the non-compliance of the mandate in section 11(4)(a) of the Act on the part of the respondent is established and accordingly, the complainant is



entitled for delayed possession charges @10.85% w.e.f from the due date of possession i.e 15.03.2018 till the date of revised offer of possession i.e 08.10.2023 as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

30. Also, the amount of compensation already paid by the respondent to the complainant towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

**G.III Direct the respondent not to charge any holding charges.**

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

**G.IV Direct the respondent not to charge any maintenance charges till the physical possession is handed over to the complainant.**

32. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 1 of the buyer agreement provides the clause for maintenance charges and the

complainant allottee is required to pay the maintenance charges to the respondent in terms of obligation of complainant allottee under section 19(6) of the Act of 2016 and the same is reproduced below :

***19(6) Rights and duties of allottees***

*Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

33. However, 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.

**G.V Direct the respondent not to raise any demand which is not stipulated in the apartment buyer agreement.**

34. The respondent-builder is directed not to charge anything which is not a part of the buyer's agreement.

**G.VI Direct the respondent to pay cost of litigation.**

35. 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**

36. 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 pay the interest at the prescribed rate i.e. 10.85 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e. 15.03.2018 till the date of revised offer of possession i.e. 08.10.2023 as per section 18(1) of the Act of 2016 read with rule


15 of the rules.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- iii. Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

37. Complaint stands disposed of.

38. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 09.01.2024**