

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

Complaint no.
Date of decision

4467 of 2023
22.05.2024

Sarita Kashyap
R/o: - H.no.-1, Pratap Enclave,
Mangla Bazar Road, Uttam Nagar,
New Delhi-110019.

Complainant

Versus

M/s Chirag Builders Pvt. Ltd.
Corporate Office at: Building No-80, Floor-1st,
Sector-44, Gurugram, Haryana.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Shivdeep (Advocate)
Sh. Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia*

prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"ROF Ananda", Sector 95, Gurugram
2.	Nature of the project	Affordable
3.	RERA Registered/ not registered	184 of 2017 dated 14.09.2017
4.	RERA registration valid up to	13.09.2021
5.	Unit no.	B-1305, Type-E, 2 BHK (As on page no. 17 of complaint)
6.	Unit area admeasuring	549.17 sq.ft. [Carpet-area] 100.00 sq.ft. [Balcony area] Alongwith 2 wheeler car parking (As on page no. 17 of complaint)

7.	Environment clearance	09.10.2017 [As per the HARERA registration certificate]
8.	Agreement to sell	04.11.2019 (As on page no. 19 of complaint)
9.	Possession clause	<p>Clause 7 POSSESSION OF THE SAID FLAT</p> <p><i>7.1 Within 3 months from the date of issuance of Occupancy certificate, the promoter shall offer the possession of the said Flat to the Allottee. Subject to Force majeure circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligations, formalities or documentation as prescribed by the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later.</i></p> <p>[Emphasis supplied]</p>
10.	Due date of possession	09.04.2022 [09.10.2021+ 6 months on account of covid-19]
11.	Total sale consideration	Rs.24,96,245/- (As on page no. 104 of reply)

12.	Amount paid by the complainants	Rs.25,04,035/- (As on page no. 104 of reply)
13.	Occupation certificate /Completion certificate	22.02.2022
14.	Offer of Possession	23.02.2022 (As on page no. 101 of reply)
15.	Final opportunity	20.12.2023 (As on page no. 103 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant vide application no. 15673 applied for allotment of a residential flat no. B-1305 in Block/Tower-B, on 13th Floor, having carpet area of 549.17 sq. ft. and balcony area of 100.00 sq. ft. alongwith a two wheeler open parking space in project namely "ROF ANANDA" situated at Sector-95, Gurgaon, Haryana, being developed by the respondent.
- II. That the respondent and the complainant entered into a registered agreement for sale dated 04.11.2019. As per the agreement, the respondent had to deliver the apartment within 4 years from the date of environmental clearance i.e. 4 years from 09.10.2017. The due date of possession was 09.10.2021. That respondent failed to deliver the possession till date.



- III. That the complainant continued to make the payments as per the payment plan. However, during pandemic Covid-19 time some installments were not paid on time as the complainant was not well, however, later on the complainant made the entire payment of Rs.25,04,035.00/- and nothing is due on the part of the complainant.
- IV. That the complainant has been requesting the respondent to come forward and to execute the sale deed/ conveyance deed and also to hand over the flat in question to the complainant. Initially the respondent continued to linger on to execute the sale deed/conveyance deed of the flat in question, on one pretext or the other and after that demanded illegal remuneration of Rs.5,80,198/-, which is totally unlawful and against the stipulations of the agreement to sell.
- V. That finding no alternative, the complainant issued a legal notice dated 25.02.2023, whereby calling upon the respondent to come forward within 15 days of the receipt of the notice and to complete the deal by execution of sale deed/conveyance deed on favour of the complainant and also by handing over the physical possession of the flat in question to her. The legal notice has been duly served upon the respondent, as is evident from the postal tracking report. However, the respondent neither complied with the requirements of the legal notice nor replied to the same.

C. Relief sought by the complainants:

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

- I. Direct the respondent to offer the possession of the said unit after obtaining the occupation certificate and pay delayed possession charges.
 - II. Direct the respondent to not charge holding charges and maintenance from the complainant till the actual handover of possession of the unit.
 - III. Direct the respondent to execute the conveyance deed.
 - IV. Direct the respondent to pay Rs.5,00,000/- as litigation charges of the present complaint.
5. 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.**
6. The respondent has contested the complaint on the following grounds: -
- I. That at the very outset, it is most respectfully submitted that the complaint is not maintainable for the reason that the agreement contains a dispute resolution clause which refers to the mechanism to be adopted by the parties in the event of any dispute i.e. Clause 38 of the Buyer's Agreement, which is reproduced for the ready reference:-

"All or any disputes arising out or touching upon in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through the adjudicating officer appointed under the Act".

- II. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that her calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainant cannot be allowed to succeed.
- III. That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhorka, Sector 95, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Ananda' from the Director Town and Country Planning, Haryana, Chandigarh vide approval bearing license no. 17 of 2016 dated 25.10.2016 under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976 read with the Affordable Group Housing Policy, 2013 issued by the Government of Haryana vide the Town and Country Planning Department notification dated 19.08.2013 as amended from time to time.
- IV. That the respondent had obtained the approval on the building plans from DTCP dated 07.12.2016 and the environment clearance dated 09.10.2017 from the State Environment Assessment Authority, Haryana for the project.
- V. That after checking the veracity of the project, the complainant applied for allotment of an apartment. The complainant was aware that all the payment demands towards the total sale consideration

were to be demanded by the respondent strictly as per the said policy and only after being completely satisfied about the same, had made the booking with the respondent.

- VI. That the payment plan of the unit applied for was strictly as per the notified Affordable Housing Policy, 2013. The relevant clause i.e 5(iii)(b) of the said policy is reproduced hereunder:-

*"b. ...Any persons interested to apply for allotment of flat in response to such advertisement by the colonizer may apply on the prescribed application form **along with 5% amount of the total cost of the flat.** All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The application will be required to deposit **additional 20% amount of the total cost of the flat at the time of allotment of the flat.** The balance **75% amount will be recovered in six equated six monthly installments** spread over three year period..."*

- VII. That the draw was conducted on 05.11.2018 and the complainant was intimated of being a successful applicant and was intimated that a unit bearing no. B-1305 having carpet area of 549.17 sq ft. and balcony area of 100 sq ft. along with a two-wheeler parking space is allotted to her. Vide the intimation letter dated 05.11.2018, a demand of Rs.4,94,604/- was raised by the respondent as per the payment plan which was in strict compliance with the Affordable housing Policy, 2013 which the complainant had to remit in favour of the respondent on or before 20.11.2018. The complainant failed to remit the said amount on time.

- VIII. That the respondent vide its demand letter dated 05.04.2019 raised a payment demand of Rs.7,97,581/-. However despite reminders dated 21.05.2019 and 11.06.2019, the complainant made only part-

- payment and the remaining amount was adjusted in the next installment demand as arrears.
- IX. On the basis of the application, an agreement was sent by the respondent to the complainant. The complainant signed the agreement only after being fully aware of all the limitations and obligations and after being completely satisfied with the terms and conditions of the said agreement. Thus, the agreement for sale was signed between the parties on 04.11.2019.
- X. The complainant was aware that as per Clause 2.2 of the agreement, timely payment of the instalment amount was the essence of the allotment. It was understood vide Clause 2.5 of the agreement and as per Clause 5(iii)(b) of the Affordable Scheme Policy, 2013, that if the allottee fails to remit the payment demanded by the respondent on time, then it would be bound to make payment towards interest @15% per annum. Despite being aware of the terms and conditions, the complainant failed to remit the payments on time for the reasons best known to her.
- XI. That vide demand letter dated 18.03.2020, the respondent demanded an amount of Rs.6,06,282/- inclusive of the previously unpaid demands. The due date of payment as per the said demand letter was 05.11.2019. However, yet again, the complainant failed to remit the payment.
- XII. That vide demand letter dated 30.09.2020, the respondent demanded Rs.12,13,226/- from the complainant, which was to be paid till 05.11.2020. However, the complainant yet again failed to remit the entire amount. On account of failure of the complainant in remitting

the said amount, the respondent sent a final opportunity letter to the complainant on 04.11.2020.

- XIII. That the respondent has throughout acted in conformity with the Affordable Housing Policy, 2013 and has demanded amounts from the complainant strictly as per the payment plan emphasized in the said policy and in accordance with the same the respondent sent a demand letter dated 19.01.2021 for the net payable sum of Rs.18,43,524/-. The complainant failed to honour the same and again failed to remit the payment in favour of respondent on or before the due date despite reminders dated 02.06.2021 and 16.09.2021.
- XIV. That the respondent yet again, as per the terms of the allotment issued a demand letter dated 23.02.2022 for the net payable amount of Rs.23,78,499/-. The complainant finally made some part-payment and has failed to remit the complete payment to the respondent till date.
- XV. That as per Clause 7.1 of the agreement, the respondent was to handover the physical possession of the unit to the complainant within a period of 4 years from the date of approval of the environment clearance. However, as per the said clause, the due date to handover the possession of the unit was subject to force majeure conditions and timely payment of instalment by the allottee. It was further agreed vide Clause 7.3 of the agreement that if the implementation of the project was affected on account of force majeure conditions, then the respondent would be entitled to an extension of time. Clauses 7.1 and 7.3 of the Agreement are reproduced hereunder:-

"7.1. Within 3 months from the date of issuance of Occupancy Certificate, the Promoter shall offer for possession of the said flat to the Allottee. Subject to Force Majeure Circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment....the Promoter shall offer possession of the said flat to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance."

"7.3...If the Completion of the project is delayed due to any of the above conditions, then the Allottee agrees that the promoter shall be entitled to extension of time for delivery of possession of the said Flat.."

XVI. That on account of outbreak of Covid-19 pandemic, the implementation of the entire project was affected. The due date of possession as per the terms of the agreement without taking into consideration the force majeure conditions would have been 09.10.2021. The fact that outbreak of covid pandemic event was a force majeure condition and was beyond the reasonable control of the developers including the respondent was acknowledged by the Authority wherein the completion date, revised completion date and extended completion date was automatically extended by 6 months. Thereafter on account of second wave of COVID-19 pandemic Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in its meeting held on 2nd of August 2021 ordered for extension of 3 months from 1st April 2021 to 30th of June 2021. It was observed that the second wave of COVID-19 pandemic has adversely hit all sections of the society and it being a case of natural calamity, the authority pursuant to section 37 of the RERA Act, 2016 had decided to grant the said extensions. It was further directed that no fee/ penalty shall be paid/payable by the developer on account of

delay as the same was beyond its reasonable control and apprehension. Thus, as per the terms of the agreement, the due date to handover the possession of the unit in question was 09.07.2022.

- XVII. That despite such event, the respondent completed the construction of the tower in which the unit allotted to the complainant is located and offered the possession of the unit vide letter dated 23.02.2022. As on date, the complainant is bound to make payment of Rs.5,80,207/- towards the total sale consideration of the unit. Thus, it is very safe to say that there is no delay on the part of the respondent in completing the construction of the unit and offering the possession to the complainant although the complainant has throughout been at default.
- XVIII. It is pertinent to mention here in that as per clause 7.6 of the agreement and section 19 of the RERA Act, 2016, upon receiving a written intimation from the builder to take the possession, the complainant was to take the possession by executing necessary undertakings, formalities and documentation and after making payment of the due amount. However, the complainant has till date not taken the possession nor has made the payment towards the balance sale consideration. Furthermore, as per the final opportunity letter dated 20.12.2023, the complainant is bound to pay Rs.6,26,664/- to the respondent.
- XIX. That as per the ledger as on 25.01.2024 an amount of Rs. 580,207/- has been accrued and the same is payable by the complainant to the respondent on account of continuous defaults on her part. The

complainant is trying to unilaterally extract benefits from the respondent which she is not entitled.

7. 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

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

8. 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

9. 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;

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

F. Findings on the objections raised by the respondent.

F.1 Objection regarding the complainants being investors.

11. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, she is not entitled to the protection of the Act and also not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time

the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.24,96,245/-** to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as **M/s Srushti Sangam Developers Pvt.**

Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

F. II Objection regarding force majeure conditions

13. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as Covid-19. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic.

G. Findings on the relief sought by the complainants

G.I. Direct the respondent to offer the possession of the said unit after obtaining the occupation certificate and pay delayed possession charges.

14. The complainant was allotted a residential unit no.-B-1305 on 13th floor in Tower-B admeasuring a carpet area of 549.17 sq.ft and balcony area of 100sq.ft with a two wheeler open parking space in the project. Thereafter, the respondent and the complainant entered into a registered agreement for sale on 04.11.2019 and as per clause 7.1 of the said agreement the respondent undertook to deliver the possession of the unit to the complainant within 4 years from the date of approval of building plans or grant of occupation certificate,



whichever is later. The date of approvals of building plans from the concerned authorities was granted on 07.12.2016 and the environmental clearance was obtained on 09.10.2017. The environmental clearance was obtained later on and thus, the 4 years of due date of possession would be calculated from the date of obtaining the environmental clearance i.e., 09.10.2017. So, the due date of handing over possession of the unit comes to be 09.10.2021. The respondent has stated in its reply that the construction of the project was affected due to the outbreak of the Covid-19 pandemic and the fact that the outbreak of covid-19 was a force majeure condition and was beyond the reasonable control of the respondent. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. Thus, after adding the 6 months of extension on account of covid-19, the due date of possession comes out to be 09.10.2021 + 6 months i.e., 09.04.2022.

15. The occupation certificate in respect to the concerned project has been granted by the concerned government authority on 22.02.2022 (as stated in the offer of possession sent by the respondent to the complainant on 23.02.2022 on page no. 101 of the reply) and the respondent has offered possession of the unit to the complainant on



23.02.2022. The due date of possession was 09.04.2022 and the respondent has obtained occupation certificate on 22.02.2022. Thus, there is no delay on part of the respondent to complete the project within the agreed timelines.

16. The Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee, and the respondent and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020.
17. The authority is of the view that there has been no delay on the part of the respondent in completing the project. The respondent has completed and offered the possession of the unit to the complainant as the agreement, within the agreed timelines. Hence, the relief of the complainant regarding delayed possession charges does not hold any substance and is hereby declined.

G.II Direct the respondent to not charge holding charges and maintenance from the complainant till the actual handover of possession of the unit.

18. Firstly it is important to understand the meaning of holding charges which is generally used in common parlance. The term holding

charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

19. The next thing that pops up for consideration is as to what are then maintenance charges being taken by the developer/RWA. Maintenance charges are the charges, either annually or monthly, applicable to be paid by the owner/allottee once he/she has taken possession of the property/unit. These charges are paid for the general maintenance and upkeep of the building and/or society. A person purchases a flat for his own residential usage/or for letting it out further as per his own discretion and requirement. He is bound as per law to pay the maintenance charges for his flat/unit whether he is personally residing or even if the flat is kept locked and being unused.

20. The Hon'ble NCDRC in its order dated 03.01.2020 in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015** held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as

maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cumUndertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

(Emphasis supplied)

21. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra).
22. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

G.III. Direct the respondent to execute the conveyance deed.

23. Under section 11(4)(f), the promoter is under an obligation to execute a registered conveyance deed in favour of the allottee . Also, the



allottee is under an obligation to participate towards the registration of the conveyance deed. The relevant clause is reproduced below:

"11(4)The promoter shall ---

a.....

b.

c.

d.

e.

f. Execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

[Emphasis supplied]

"19(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

[Emphasis supplied]

24. Thus, the respondent is directed to execute the conveyance deed in favour of the complainant and also, the complainant is directed to participate in the registration of the conveyance deed.

G.IV Direct the respondent to pay Rs.5,00,000/- as litigation charges of the present complaint.

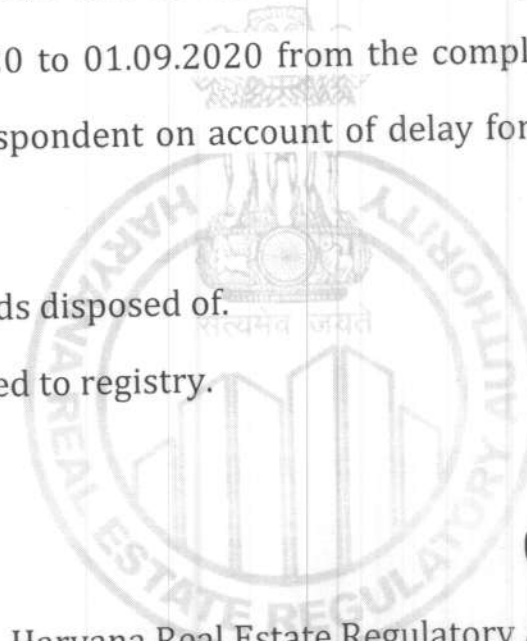
25. The complainant is seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. **6745 -67 49 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)** has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in

Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach th adjudicating officer for seeking the relief of compensation'

H. Directions of the authority

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to handover the possession of the unit to the complainant within 60 days of this order.
 - ii. The respondent has completed and offered the possession of the unit to the complainant as the agreement, within the agreed timelines. Hence, the relief of the complainant regarding delayed possession charges does not hold any substance and is hereby declined.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement

- v. The respondent is directed to execute the conveyance deed in favour of the complainant within months from the handing over of possession to the complainant.
- vi. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the above said covid period.
26. Complaint stands disposed of.
27. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.05.2024

HARERA
GURUGRAM