

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

Date of decision: 24.05.2024

NAME OF THE BUILDER		M/S PYRAMID INFRATECH PVT. LTD.	
PROJECT NAME		URBAN HOMES-II	
S. No.	Case No.	Case title	Appearance
1	CR/7175/2022	Madhu Singla V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
2	CR/7251/2022	Ajeet V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
3	CR/7241/2022	Anurag Saini V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
4	CR/7242/2022	Lalit Mohan Saini V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
5	CR/7252/2022	Rinku V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
6	CR/7265/2022	Vanshdeep Kewlani V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
7	CR/7735/2022	Rajesh Kumar Jain V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla

			Ms. Priyanka Aggarwal
8	CR/7319/2022	Seema Srivastava V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal
9	CR/7588/2022	Aastha Nagpal V/S M/S Pyramid Infratech Pvt. Ltd.	Sh. Ashwani Kumar Singla Ms. Priyanka Aggarwal

CORAM:

Shri Sanjeev Kumar Arora

Member**ORDER**

1. This order shall dispose of the nine 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, Urban Homes-II situated at Sector-86, Gurugram being developed by the same respondent/promoter i.e., M/s Pyramid Infratech Pvt. Ltd. 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:

Project Name and Location	"Urban Homes-II" at sector 86, Gurgaon, Haryana.
Project area DTCP License No.	5.2875 acres 154 of 2014 dated 09.09.2014 valid upto 21.01.2020
Rera Registered	Registered vide no. 253 of 2017 dated 03.10.2017 valid upto 28.02.2020
Possession clause: 8. POSSESSION 8.1. Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer possession of the Said Apartment to the Allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, (herein referred to as the "Commencement Date"), whichever is later.	
Date of Sanction of building plans: 25.05.2015 Date of environment clearance: 22.01.2016	
Due date of possession: 22.01.2020 [Calculated from the date of environment clearance]	
Occupation certificate: Not obtained Offer of possession: 22.10.2020	

Sr. no.	Complaint No., Case Title and Date of Filing Complaint	Unit No.	Unit admeasuring	Date of apartment buyer's agreement	Due date of possession	Total Sale Consideration/Total Amount paid by the complainant	Relief Sought



1	CR/7175 /2022 Madhu Singla V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 15.11.2 022 Reply Status: 18.08.2 023	110 1, 11 th Floor, Tower 7	515.57 sq. ft. (carpet area) + 100 sq. ft. (Balcony area)	21.12.20 20	22.01.20 20 OC: 25.09.20 20 Offer: 22.10.20 20 Possessi on: 11.12.20 20	TSC:- ₹22,74,00 1/- AP:- ₹22,74,00 1/-	DPC
2	CR/7251 /2022 Ajeet V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 30.11.2 022 Reply Status: 15.09.20 23	207, 2 nd Floor, Tower 5	500.42 sq. ft. (carpet area) + 100 sq. ft. (Balcony area)	20.02.202 0	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possessio n : 30.11.202 0	TSC:- ₹22,08,76 3/- AP:- ₹22,08,76 3/-	DPC

3	CR/7241 /2022 Anurag Saini V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 30.11.2 022 Reply Status: 15.09.20 23	807, 8 th Floor, Towe r 3	500.42 sq. ft. (carpet area) + 100 sq. ft. (Balco ny area)	21.09.201 5	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possessio n : 02.12.202 0	TSC:- ₹22,08,76 3/- AP:- ₹22,20,57 8/-	DPC
4	CR/7242 /2022 Lalit Mohan Saini V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 30.11.2 022 Reply Status: 15.09.20 23	403, 4 th Floor, Towe r 7	500.42 sq. ft. (carpet area) + 100 sq. ft. (Balco ny area)	05.10.201 5	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possessio n : 10.12.202 0	TSC:- ₹22,08,24 9/- AP:- ₹22,29,88 8/-	DPC



5	CR/7252 /2022 Rinku V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 30.11.2 022 Reply Status: 15.09.20 23	204, 2 nd Floor, Tower r 9	339.28 sq. ft. (carpet area) + 47.36 sq. ft. (Balcon y area)	20.02.202 0	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possessio n : 16.12.202 0	TSC:- ₹14,86,51 7/- AP:- ₹14,86,51 7/-	DPC
6	CR/7265 /2022 Vanshde ep Kewlani V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 30.11.2 022 Reply Status: 19.09.20 23	1201, 12 th Floor, Tower r 1	515.57 sq. ft. (carpet area) + 100 sq. ft. (Balcon y area)	05.10.201 5	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possessio n : 05.11.202 0	TSC:- ₹22,74,00 1/- AP:- ₹22,85,15 3/-	DPC

7	CR/7735 /2022 Rajesh Kumar Jain V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 13.12.2 022 Reply Status: 19.09.20 23	1101, 11 th Floor, Tower 1	515.57 sq. ft. (carpet area) + 100 sq. ft. (Balcony area)	09.11.202 0	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possession n: 04.11.202 0	TSC:- ₹22,73,99 9/- AP:- ₹22,73,99 9/-	DPC
8	CR/7319 /2022 Seema Srivastava V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 13.12.2 022 Reply Status:	501, 5 th Floor, Tower 5	515.57 sq. ft. (carpet area) + 100 sq. ft. (Balcony area)	28.01.201 6	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possession n: 30.11.202 0	TSC:- ₹22,74,00 1/- AP:- ₹22,79,28 5/-	DPC

	19.09.20 23						
9	CR/7588 /2022 Aastha Nagpal V/S M/s Pyramid Infratech Pvt. Ltd. DOF: 13.12.2 022 Reply Status: 15.09.20 23	501, 5 th Floor, Tower 6	515.57 sq. ft. (carpet area) + 100 sq. ft. (Balcony area)	25.02.201 6	22.01.202 0 OC: 25.09.20 20 Offer: 22.10.20 20 Possession: 04.12.202 0	TSC:- ₹22,74,50 1/- AP:- ₹22,76,24 1/-	DPC

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 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/7241/2022 Anurag Saini V/S M/S Pyramid Infratech Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s).

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/7241/2022 Anurag Saini V/S M/S Pyramid Infratech Pvt. Ltd.

S.N.	Particulars	Details
1	Name and location of the project	"Urban Homes-II" at sector 86, Gurgaon, Haryana
2	Nature of the project	Affordable Group housing
3	Project area	5.2875 acres
4	DTCP license no.	154 of 2014 dated 09.09.2014 valid upto 21.01.2020
5	RERA Registered/ not registered	Registered vide no. 253 of 2017 dated 03.10.2017 valid upto 28.02.2020
7	Unit no.	807, 8 th Floor, Tower 3 (page 26 of reply)
8	Unit area admeasuring	500.42 sq. ft. (carpet area) + 100 sq. ft. (Balcony area) (page 26 of reply)
9	Date of builder buyer agreement	21.09.2015 (Page 25 of reply)
10	Date of building plan approval	25.05.2015 (page 121 of reply)

11	Environmental clearance dated	22.01.2016 (page 127 of reply)
12	Possession Clause	<p>8. POSSESSION</p> <p><i>8.1. Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer possession of the Said Apartment to the Allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, (herein referred to as the "Commencement Date"), whichever is later.</i></p>
13	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016]
14	Total consideration	₹22,08,763/- (page 40 of reply)
15	Amount paid by the complainant	₹22,20,578/- (page 41 of reply)
16	Occupation certificate	25.09.2020 (page 43 of reply)
17	Offer of possession	22.10.2020 (page 36 of reply)
18	Possession certificate	02.12.2020

B. Facts of the complaint

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

8. That the Government of Haryana, with a view to provide affordable housing approved and notified a policy called as Affordable Housing Policy 2013, which has been further amended from time to time.
9. That the respondent got approvals from competent authorities and floated an affordable housing project called Pyramid Urban Homes-II, Sector 86 Gurugram. The date of commencement of the project was 22nd January 2016.
10. That the complainant booked a dwelling unit under Affordable Housing Policy 2013, in 2015 and was allotted flat number 807 Tower 03 in Pyramid Urban Homes-II, Sector 86 Gurugram.
11. That there were so many non-compliances to the policy, the complainant approached a voluntary consumer association named fight against Injustice Forum (a body corporate registered u/s 8 of the Companies Act, 2013). The said association filed a complaint on behalf of 30 aggrieved persons; including the complainant vide number 2884/2021 before the Hon'ble Adjudicating Officer HARERA Gurugram.
12. " Apart from afore discussed claims the complainant has also prayed for penalty from respondent number 1 on account of delay in handing over possession of units. The power to entertain the claim for "delay possession charges" is with the Authority and not with the adjudicating officer. All this has been clarified by the Apex Court of India in case titled M/s New Tech promoters nd Developers Pvt Ltd vs State of UP and ors etc and Civil Appeal

number 6745-6749 of 2021. The complainant may approach the Authority to seek this relief, if same wants. This forum has no jurisdiction to entertain prayer of 'delay possession charges' same is thus declined."

13. In accordance with the provisions the project must be completed within a period of 4 years from the date of approval of building plan or grant of environmental clearance, whichever is later, which in this case is 22nd January 2016.
14. As per information available with the complainant, the building plans were approved on 25.05.2015 (Building Plan Approval ZP-1068/AD (RA)/2015/8502) and the environment clearance was issued on 22.01.2016. Out of both, the later date is 22.01.2016. Hence, the date of the commencement of the project is 22.01.2016. The project (Pyramid Urban Homes_II) was required to be completed and possession offered on or before 22d January 2020. Every single day after 22nd January 2020 is delay in possession.
15. The complainant is seeking delay possession charges on the amount paid. The complainant has fully paid an amount of Rs. 22,20,578/- against total sale consideration of Rs. 22,08,763/-.

C. Relief sought by the complainant: -

16. The complainant has sought following relief(s):
 - I. Direct the respondent to pay delayed possession charges in favour of the complainant at the prescribed interest per annum from the due date of possession i.e., 22.01.2020.
 - II. Direct the respondent to pay litigation cost of Rs. 30,000/- to the complainant.
17. 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.

18. That the complainant has concealed the material facts and has hidden the truth. As per agreement clause no. 09, and offer of possession, allottee needs to pay stamp duty charges. However, the allottee/complainant neither showed any interest for the execution of conveyance deed and nor did he pay the stamp duty charges.
19. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The buyer's agreement was executed between the complainant and the respondent on dated 21.09.2015. Thereafter, the respondent had offered possession and with mutual consent, the complainant took the possession. That vide present complaint under reply the complainant sought the delayed possession charges of the unit in question along with the compensation and interest thereon on the pretext that the respondent failed to complete construction on time.
20. That the projected timelines for possession under affordable Housing policy are based on date of statutory approvals. It was not in the contemplation of the respondent that the force majeure would occur and the construction was also affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.
21. Furthermore, the construction of project was halted on several times in direction of NGT and Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned

within the Delhi-NCR region. The ban commenced from 08/11/2016 till 16/11/2016, and similar order passed in 09/11/2017 to 17/11/2017 & 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018.

22. That the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity etc., were the reasons for delay in construction and after that, the Government took long time in granting occupancy certificate owing to its cumbersome process. Furthermore, the construction of the unit was going on in full swing and the respondent was confident to hand over the possession of unit before due date. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site. The construction was completed and the Respondent was confident to handover possession of the unit in question by January 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), Competent Authority Keep Pending the Application of OC Approx 1 Year.
23. That the construction of the unit of the complainant has been completed by the respondents in terms of the BBA. Subsequently, an application for the grant of occupation certificate ("OC") has been applied by the respondent to the Department of Town and Country Planning ("DTCP"), on dated 19/09/2019, and received the OC on dated 25/09/2020.
24. 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

25. 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

26. 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

27. 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.

28. 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 objection raised by the respondent

F.1 Objections regarding force majeure.

29. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit 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. In the present case, the date of approval of building plan is 21.09.2015 and environment clearance is 22.01.2016 as taken from the project details. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 22.01.2020. The plea of the respondent regarding various orders of the NGT and others, all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning

construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding Covid 19 is also devoid of merit as the extension of 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020, is granted for the projects having completion/due date on or after 25.03.2020. 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.

G. Findings on the relief sought by the complainant.

G. 1. Direct the respondent to pay delayed possession charges in favour of the complainant at the prescribed interest per annum from the due date of possession i.e., 22.01.2020.

30. In the present complaint, the complainant intends 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."

31. Clause 8. of the buyer's agreement provides for handing over of possession and is reproduced below:

8. POSSESSION

"8.1. Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer possession of the Said Apartment to the Allottee within a period of 4 years from the date of approval of

building plans or grant of environment clearance, (herein referred to as the "Commencement Date"), whichever is later."

- 32. Admissibility of delay possession charges at 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.

- 33.** 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.
- 34.** 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., 24.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
- 35.** The definition of term 'interest' as defined under section 2(z) 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;"*

36. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.

37. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8 of the agreement executed between the parties on 21.09.2015, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. Therefore, the due date of handing over possession was 22.01.2020. The respondent has failed to handover possession of the subject apartment by the due date of possession. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 21.09.2015 executed between the parties. The

OC for the said project was received on 25.09.2020 and subsequently offered the possession on 22.10.2020. Thereafter possession of the subject unit was provided on 02.12.2020.

38. 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 25.09.2020. 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., 22.01.2020 till the expiry of 2 months from the date of offer of possession plus two months i.e., 22.12.2020 or handing over of possession whichever is earlier.

39. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the 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., 22.01.2020 till offer of possession plus two months

or actual handing over of possession whichever is earlier, at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to pay litigation cost of Rs. 30,000/- to the complainant.

40. 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.

H. Directions of the authority

41. 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 interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till offer of possession plus two months or actual handing over of possession whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - 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 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.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. 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.
42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. The complaints stand disposed of.
44. Files be consigned to registry.

HARERA
GURUGRAM
Sharvee
(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.05.2024