

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

**Complaint no.:** 878 of 2023  
**Date of complaint:** 15.03.2023  
**Order pronounced on:** 30.05.2024

Alok Kumar  
**R/o:** 818, Sector 17-A, Tehsil and District Gurugram

**Complainant**

**Versus**

Tulsiani Constructions and Developers Pvt. Ltd.  
**Registered office:** N-3, Green Park main, New Delhi-  
110016

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Arun Kumar (Advocate)

None

Complainant

Respondent

**ORDER**

1. The present 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 provisions of the Act or the Rules and regulations made thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Project name and location	"Easy in homes", Sector-35, Gurugram
2.	Project area	5 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no. and validity status	69 of 2014 dated 25.07.2014
5.	RERA registration details	Registered Vide registration no. 144 of 2017 dated 28.08.2017 valid upto 27.08.2021
6.	License name	Dharpal Singh and Surender Singh
7.	Unit no.	E-114, tower-1, floor-14 <sup>th</sup> (page 56 of complaint)
8.	Unit size	503.58 sq. ft (page 56 of complaint)
9.	Builder buyer agreement	22.06.2016 (page 51 of complaint)
10.	Possession Clause	5.2 <i>The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within forty-eight (48) months from the date of the receiving of environment clearance or sanction of building plans whichever is later ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of instalment by the allottee(s). Developer will start the construction only after receipt of environmental clearance from the competent authority. The Developer will start receiving the further instalments from the Allottee(s) only once the environmental clearance is received. Further, if the licence, fail to get environmental clearance even after one year of holding of draw, the licence is liable to refund the amount deposited by the Allottee(s) along-with an interest of 12%, if the allottee so desires However in case the Company completes the construction prior to the period of 48 months the Allottee shall not raise any objection in taking the possession after payment of remaining sale price and other charges stipulated in the Flat Buyer's</i>

		<i>Agreement. The Company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Flat Buyer's Agreement and payments made as per Payment plan</i>
11.	Environment clearance	28.12.2015 (as per the information obtained from planning branch of Authority)
12.	Building plan approval	16.06.2015 (as per the information obtained from planning branch of Authority)
13.	Due date of possession	28.12.2019 (calculated from the date of environmental clearance being later)
14.	Total sale consideration	Rs.18,60,073/- (as per BBA page 60 of complaint)
15.	Amount paid by the complainant	Rs.16,83,366/- (as per payment receipts page 87-97 of reply) Rs.16,99,001/- (as alleged by complainant page 22 of complaint)
16.	Tripartite agreement	27.06.2016 (page 98 of complaint)
17.	Offer of possession	Not offered
18.	Occupation Certificate	Not obtained

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

1. That the complainant was in need of a residential flat for his own use. In November-December 2015, agents and representatives of the respondent approached the complainant and informed that the respondent is developing an affordable housing complex known as "Easy in Homes" within the revenue estate of village Dhunela, Sector 35, Tehsil Sohna, District Gurugram. The agents and representatives assured the complainant that the respondent company is a reputable builder and would deliver the project completed in all respects within 48 months from the date of booking.

- II. Believing the assurances given by the agents and representatives to be true, the complainant made an application for allotment on 15.01.2016 to the respondent and paid Rs.93,000/- towards the booking amount. The complainant booked a unit admeasuring a total carpet area of 503.58 sq. ft. and balcony of 79.97 sq. ft. along with a parking space for two-wheeler at the basic sale price of Rs.3600/- per sq. ft., with a total consideration of Rs.18,20,088/-. The complainant opted for the time-linked payment plan.
- III. That despite the assurances given by the representatives, officials and agents of the respondent issued the receipt as late as on 11.03.2016, instead of on the same day of the payment.
- IV. That on 08.04.2016 the complainant paid Rs.93,000/- towards the 2<sup>nd</sup> time-linked instalment. However, the respondent instead of issuing the receipt on the same day, issued it on 11.04.2016 vide receipt No. 2016-17/1023. Despite receiving two instalments, the respondent in breach and violation of the assurances and promises made by the representatives and officials neither executed the agreement nor gave the allotment letter. Further, on persuasion the respondent called the complainant to its office to sign the pre-printed, one-sided buyer's agreement without leaving any room for the complainant to discuss or negotiate the terms of the said buyer's agreement or allowing time to read it thoroughly.
- V. Thereafter, the respondent made various demands and the complainant made all the payments as demanded. The respondent also charged the complainant penal interest as 15% on delayed payments which was arbitrary and without the complainant's consent.
- VI. That the respondent failed to execute the agreement at the time of accepting the booking amount for the subject unit i.e., on 15.01.2016 or on the date of issuance of the receipt i.e., on 11.03.2016, but did so only in the beginning of June 2016. The buyer's agreement contained unfair, biased terms and

conditions favouring the respondent, which were not only against the interests and rights of the complainant but also discriminatory.

- VII. That upon going through the agreement, the complainant found the terms and conditions to be unfair, biased, and against the assurances and promises made by the agents, representatives, and executives of the respondent. The complainant requested the respondent to amend the terms, but the respondent threatened the complainant either to sign the agreement as it is or face cancellation of the allotment without any refund. Due to the circumstances created by the respondent, the complainant finding no other option was compelled to sign the agreement as given by the respondent.
- VIII. Moreover, there was a wilful, deliberate, unjust, and huge inordinate delay of over 48 months in the completion of the project as well as in handing over the possession from the date of booking. After constructing the structure, the respondent had abandoned the project, culminating the complainant's hope of having his own shelter.
- IX. That the complainant got the subject unit financed from Dewan Housing Finance Corporation Ltd. (DHFL) for a sum of Rs.16,70,641/- on 16.07.2016 for a tenure of 20 years at an interest rate of 9%, which was variable. The respondent, with its malicious design, had deceived the complainant by not raising construction and completion of the said project as promised, committed unfair and restrictive trade practices, and cheated the complainant. The complainant had made a total payment of Rs.16,99,001/-.
- X. Despite the above, the respondent had overcharged the amount from the complainant without any lawful authority, with the intention and motive to cheat the complainant and cause him unlawful losses, including wrongly and unlawfully charging GST and CGST.

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

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

- I. Direct the respondents, jointly and severally, to pay the interest at the rate of 15% per annum compound for causing inordinate delay in delivery of possession of the unit/flat in issue on the amount deposited by the complainants to be calculated from the due date of delivery i.e. 15.01.2020 till the delivery of flat and the full realization of the interest whichever is later.
  - II. Direct the respondents to stop the deficient service as well as the unfair and restrictive trade practices with immediate effect and declare that the terms and conditions of the flat buyer's agreement are unfair, biased and unjust.
  - III. Direct the respondents to complete the project as well as the apartments/flat booked by the complainants and deliver the same duly completed in all respect as agreed between the parties, within 6 weeks from the date of order(s)
  - IV. Direct the respondents to pay the complainant a sum of Rs.5,00,000/- towards the litigation expenses for this complaint.
5. The present complaint was filed on 15.03.2023 in the Authority. The respondent was granted several opportunities to put in appearance and file reply. However, despite specific opportunities respondent failed to file reply. In view of the same respondent defence was struck off and the matter was proceeded ex-parte against the respondent vide order dated 30.11.2023. Further, the respondent filed an application dated 26.04.2024 to set-aside order dated 30.11.2023 for filing reply. However, after filing the said application respondent again failed to appear and file reply. In view, of the same the said application was dismissed vide order dated 30.05.2024.
6. 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 submissions made by the complainant.

**D. Jurisdiction of the authority**

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

**D.I Territorial jurisdiction**

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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.

**D.II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

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.

**E. Findings on the relief sought by the complainant.**

**E.I Direct the respondents, jointly and severally, to pay the interest at the rate of 15% per annum compound for causing inordinate delay in delivery of possession of the unit/flat in issue on the amount deposited by the complainants to be calculated from the due date of delivery i.e. 15.01.2020 till the delivery of flat and the full realization of the interest whichever is later**

**E.II Direct the respondent to stop the deficient service as well as the unfair and restrictive trade practices with immediate effect and declare that the terms and conditions of the Flat Buyer's Agreement are unfair, biased and unjust.**

11. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
12. 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. Section 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."*

13. Clause 5.2 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

*"5.2-Possession*

*The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within forty-eight (48) months from the date of the receiving of environment clearance or sanction of building plans whichever is later ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of instalment by the allottee(s).....*

**(Emphasis Supplied)**

14. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession



clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

15. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.

**16. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges till delivery of possession. 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, *ibid*. 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."*

17. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, 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.

18. 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., 30.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

19. 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;"*

20. 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 them in case of delayed possession charges.

21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of

clause 5.2 of the buyer's agreement, the possession of the subject unit was to be delivered within 48 months from the date of receiving environmental clearance or sanction of building plans whichever is later. In the present case, the date of approval of building plans is 16.06.2015, and the date of environment clearance is 28.12.2015. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 28.12.2019.

22. 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 Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 28.12.2019 till the actual handing over of possession or valid offer of possession plus 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

23. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties, after receiving occupation certificate from the competent authority.

**E.III Direct the respondents to complete the project as well as the apartments/flat booked by the complainants and deliver the same duly completed in all respect as agreed between the parties, within 6 weeks from the date of order(s).**

24. In the present case, the due date of possession was 28.12.2019. However, even after a lapse of more than three years the respondent has neither completed the project nor obtained occupation certificate from the competent Authority.



Further, no offer of possession has been made to the complainant So, the respondent builder is directed to complete the project and further obtain occupation certificate from the competent Authority and to handover the possession after completing the project failing which the respondent is liable to penal action on account of failure to complete project within the timelines as declared u/s 4(2)(1)(C).

**E.IV Direct the respondent to pay litigation cost of Rs.1,00,000/-**

26. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357* 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.

**F. Directions of the Authority**

27. 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 to the complainant against the paid-up amount at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay from the due date of possession 28.12.2019 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- II. The arrears of such interest accrued from due date of possession till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to complainant before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter.
- VI. The respondent is directed to obtain occupation certificate from the competent Authority and to handover the possession after completing the project failing which the respondent is liable to penal action on account of failure to complete project within the timelines as declared u/s 4(2)(1)(C).
- VII. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

28. Complaints stand disposed of.

29. Files be consigned to registry.

**Dated: 30.05.2024**

  
**(Vijay Kumar Goyal)**  
**Member**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram