

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

Complaint no. : 2725 of 2023  
Order reserved on : 16.05.2024  
Order pronounced on: 16.05.2024

Ms. Archana Dhingra

R/o: T-2/901, Unitech Fresco, South City-II, Nirvana Country,  
Sector-50, Gurugram, Haryana-122018.

**Complainant**

**Versus**

Clarion Properties Limited

Regd. office: Plot No. 8, Sector-44, Gurugram-122002

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Varun Chugh (Advocate)

Shri Arul Parkash (Advocate)

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 there under or to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project-related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the

possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"The Hive" at sector 102, Gurgaon, Haryana
2.	Nature of the project	Commercial
3.	Project area	5.846875 acres
4.	DTCP License no. & validity status	93 of 2012 dated 05.09.2012 valid upto 04.09.2025 30 of 2014 dated 12.06.2014 valid up to 11.06.2024 31 of 2014 dated 12.06.2014 valid up to 11.06.2024
5.	Name of Licensee	M/s Radhika Polymers & Others
6.	RERA registered or not	Registered Vide no. 316 of 2017 dated 17.10.2017 up to 16.11.2024
7.	Unit No.	G-64, on ground floor (Page no. 45 of complaint)
8.	Unit area measuring	356 sq. ft. (page no. 45 of complaint)
9.	Date of builder buyer agreement	28.10.2016 (Page no. 43 of complaint)
10.	Possession Clause	7. Construction & Possession 7.1 That the Company Shall under normal circumstances, complete the construction of the Said Space <b>within a period of 42 months of the start of construction of building in which the said space is booked or execution of agreement whichever is later, with additional grace period of 6 months</b> and subject to force majeure conditions, in accordance with the plans and specifications seen and accepted by the Allottee(s), subject to any such additions, deletions, alterations, modifications, in the layout plans, change in number, dimensions, height , size, area or



		<i>change of entire scheme, which the Company may consider or may be required by any competent authority to be made in them or any of them.</i>
11.	Due date of possession	28.10.2020 (Due date is calculated from the date of execution of agreement including grace period of 6 months)
12.	Total sale consideration	Rs.64,48,142/- (As per customer ledger dated 30.05.2023 at page no. 12 of complaint)
13.	Amount paid by the complainant	Rs.60,22,671/- (As per customer ledger dated 30.05.2023 at page no. 12 of complaint)
14.	Occupation certificate	06.02.2023 (Page no. 68 of reply)
15.	Offer of possession	13.02.2023 (Page no. 71 of complaint)

**B. Facts of the complaint:**

3. The the property in question i.e. Retail Space bearing No. G-64, Ground Floor admeasuring 356 Sq. Ft. (Super area), in the project of the Respondent i.e. Clarion Properties Limited, known as "The Hive" (the "Project") situated at Sector-102, Gurugram, Haryana, was booked by the Complainant vide application dated 20.07.2013 and a unit allotment letter was issued by the Respondent, in favour of the complainant.
4. The total cost of the aforementioned unit was Rs. 47,50,820/- and the since it was a construction linked payment plan, hence the entire sale consideration has already been paid by the complainant and nothing is due and payable to the respondent except the registration and advance maintenance charges which are payable at the time of handing over of possession.
5. After making the payment of Rs 13 lacs Approx. towards the cost of the unit, in the year 2013-14 and 2015, the respondent did not execute any builder

buyer's agreement or any agreement for sale and it was only after much persuasion by the complainant that finally on 28.10.2016, the respondent got constrained to execute the builder buyer agreement with respect to the unit in question.

6. In the said buyer's agreement dated 28.10.2016 (the "agreement"), the respondent had categorically stated that the possession of the said unit would be handed over to the complainant within 42 months from the start of construction of the building in which the said space is booked or from the date of signing of the builder buyer's agreement, whichever is later. The said buyer's agreement is totally one sided, which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent, which is further manifest from a bare perusal of the clauses set forth in the buyer's agreement.
7. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 34 months. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it.
8. The complainant, without any default, had been timely paying the instalments towards the property, as and when demanded by the respondent, towards the aforesaid project. The balance payment was to be made at the time of offering of possession.
9. The respondent had promised to complete the project by April 2020. The builder buyer's agreement was executed on 28.10.2016 and the respondent has finally offered the possession of the retail space on 13.02.2023, which has resulted in extreme kind of mental distress, pain and agony to the complainant.

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10. It is worth mentioning here that the complainant vide her emails addressed to the Respondent had asked to indemnify her, for the delay in handing over the possession of the retail space but the respondent company had not even compensated the complainant as per the terms of the buyer's agreement. In fact, the complainant through her emails had demanded compensation as per the RERA regulations but the respondent company had miserably failed to accede to her legitimate request and has turned a deaf ear.
11. The respondent has also unilaterally increased the area of the retail space from 356 sq. ft. (super area) to 411 sq. ft. (super area) i.e. a substantial increase of 55 sq. ft and increased the price of the unit additionally thereby causing an additional financial burden upon the complainant.
12. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. the respondent has resorted to misrepresentation. the complainant, therefore, seek direction to the respondent to handover the physical possession of the unit and pay delayed possession interest charges as per the provisions of the real estate regulation act, 2016.

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

13. The complainants have sought the following relief(s):
  - i. Direct the respondent to handover the physical possession of the unit in a time bound manner and to pay delayed possession interest to the complainant.
  - ii. Direct the respondent to pay sum of Rs. 50,000/- to the complainant towards the cost of the litigation.

**D. Reply by the respondent:**

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14. After being completely satisfied with the development status and the project, the Complainant, applied for the registration of the retail unit/space in the project of the respondent with full knowledge and subject to all the laws, notification and rules applicable to the change of area, which have been duly explained by the respondent company and understood by the complainant. It is pertinent to mention here that the complainant has opted for the construction linked payment plan. Accordingly, the complainant was provided with the allotment of tentative retail unit/space bearing unit no. g-64, (hereinafter referred to as the "retail unit / space") with super area tentatively admeasuring 356 sq. ft. as per the buyer's agreement, which at the time of completion of the tower, increased with super area admeasuring 411 sq. ft.
15. The Buyer's Agreement dated 28.10.2016 was executed between the Complainant and Respondent. That the agreement was executed willingly, voluntarily and consciously after complete understanding of the parties with respect to the terms and conditions thereof and no protest of any kind was laid by the complainant at any point in time.
16. The present complaint has been filed on the premise that the respondent company has delayed in handing over possession of the unit, however, it is most humbly submitted that the respondent company has never promised that the possession will be given in 48 months (42 months + 6 months' grace period) but stated only to complete the construction of the said properties and that too under normal circumstances only. That furthermore, in terms of the buyer's agreement, the respondent company undertook that the company shall, under normal circumstances, complete the construction of the said retail unit/space within a period of 42 (forty-two) months of, the start of construction of building in which the said space is booked or execution of the buyer's agreement, whichever is later, with an additional grace period of 06 (six) months subject



to force majeure conditions, and subject to such additions, deletions, alterations, modifications in the layout plans, change in number, dimensions, height, size, area or change of entire scheme, which the company may consider or may be required by any competent authority to be made in them or any of them.

17. In March, 2020, the world was struck with Covid-19 pandemic, which apart from inflicting havoc to lives of millions, destroyed the momentum and disrupted the work flow of many industries including construction work. These were the unprecedented and unexpected times which could not have been foreseen at the time signing of Buyer's Agreement. The contingency plan to these situations finds its resort in the force majeure and other related clauses including its description and mentions in buyer's agreement at many places. At multiple instances and for elongated durations, the work at construction sites was halted, both, due to unavailability of essential materials, workmen & other related factors and due to explicit notifications by various government authorities specifically barring the construction activities. The delays due to impossibility of continuation of work, considering the Covid-19 pandemic, consequent lockdowns, government notifications barring construction work including stoppage of construction activities due to pollution, incidental work/ time loss and other force majeure situations/ events resulting delay in construction.
18. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:
- Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7<sup>th</sup> Nov 2017 till further notice, (Till date the order has not been vacated).

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- National Green Tribunal has passed the said order dated 9<sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing (17<sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the completion of interior finishing/interior work of projects. The order dated 9<sup>th</sup> Nov, 17 was vacated vide order dated 17<sup>th</sup> Nov, 17.
- Haryana State Pollution Control Board, Panchkula has passed the order dated 29<sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27<sup>th</sup> Oct 2018. By virtue of order dated 29<sup>th</sup> of October 2018 all the construction activities including the excavation, civil construction was directed to remain close in Delhi and other NCR Districts from 1<sup>st</sup> Nov to 10<sup>th</sup> Nov 2018, (1<sup>st</sup> Nov to 10<sup>th</sup> Nov, 2018).
- NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.
- Commissioner, Municipal Corporation, Gurugram has passed an order dated 11<sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11<sup>th</sup> Oct 2019 to 31<sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period, (11<sup>th</sup> Oct 2019 to 31<sup>st</sup> Dec 2019).
- RERA Gurugram order no. 9/3-2020 HARERA / GGM (Admn) to extend the completion date automatically by 6 months, due to outbreak of Covid-19, duly recognized as a force majeure event, (Feb 2020 to till Aug 2020).



- On the basis of MHA guidelines dated 23.03.2021, the District Administration Gurugram imposed restrictions on movement of non-essential services with a view to contain the spread of COVID-19, (26<sup>th</sup> April 2021 to 6<sup>th</sup> June 2021).
19. The aforesaid periods where force majeure conditions admittedly operated, and prevented the respondent from undertaking construction, are liable to be excluded from the time to be calculated for the completion of construction as per the force majeure clause no. 7.2 of the buyer's agreement
  20. The the complaint filed by the Complainant is not maintainable as the Buyer's Agreement dated 28.10.2016 contains Arbitration Clause that mandates invoking of Arbitration proceedings in the event of a dispute between the parties.
  21. Clause 7.3 of the Buyer's Agreement further stipulates that every allottee is under an obligation to take the possession of the Unit/ Space, wherein the Occupation Certificate has been received.
  22. That the respondent company had applied for the Occupation Certificate on 02.08.2022. Thereafter, Occupation Certificate was received on February 06.02.2023 and in furtherance of receiving of the Occupation Certificate, final call letter dated 13.02.2023 was sent to the complainant requesting the complainant to remit an amount of INR 13,95,317/- which stood outstanding and overdue as per the payment plan. However, the complainant failed to deposit the said amount in terms of the demand letters. That the period from letter dated 02.08.2022, i.e., when the respondent company had applied for Occupation Certificate to the date of receipt of Occupation Certificate dated 06.02.2023, ought to be excluded while computing the construction and delivery timeline.
  23. The complainant was, at various instances, informed that there was delay on the part of the complainant in remittance of timely payment, thereby waiving

off the complainant's entitlement to claim for delay in handing over the possession of the unit, if any, and the calculations made by the complainant are wrong and misconceived.

24. The respondent company sent the demand letters as per the payment plan, however, the complainant failed to remit the amount in terms of the demand letters. The respondent company had addressed final call letter dated 13.02.2023 along with the statement of accounts, informing the complainant that it had commenced the handing over the possession of units/spaces in the said project, The Hive.
25. The complainant is also liable to pay the holding charges from the expiry of 30 days from the date of final call letter till the realization of the principal amount calculated at the rate of INR 7/- per sq. ft. per month under clause 7.4 of BBA.
26. The complainant, with malafide intention to wriggle out from the buyer's agreement, is not coming forward to pay the balance sale consideration in terms of the final call letter / offer of possession and subsequent reminders and complete the possession formalities in respect thereof.

**E. Jurisdiction of the Authority:**

27. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

28. 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 the entire Gurugram District for all purposes 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**

29. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*Section 11(4)(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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

30. Hence, given 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.I Objection regarding complainant is in breach of agreement for non- invocation of arbitration.**

31. The respondent has raised an objection that the complainant has not invoked the arbitration proceedings as per the provisions of buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

*"29. Arbitration*

*All or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereto and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through*

*arbitration of a Sole Arbitrator to be appointed by the Chairman of the Company. The Arbitration proceeding shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications thereof for the time being in force. Reference to ad pendency of Arbitration shall be without prejudice to the right of the Company to effect recovery of its dues under this agreement. The decision of the Arbitrator shall be final and binding on the parties. The language of Arbitration shall be English. The Arbitration proceeding expenses shall be equally shared between the parties. The venue of Arbitration shall be at New Delhi."*

32. The respondent contended that as per the terms & conditions of the agreement dated 28.10.2016 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*, 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.
33. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within the right to seek a special remedy available in a beneficial Act such as the Consumer

Protection Act and Act of 2016 instead of going in for an arbitration. Hence, there is 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 Objections regarding force Majeure.**

34. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Environmental Pollution Prevention & Control Authority, NGT, Haryana State Pollution Board, and other Authorities to curb the pollution in NCR and outbreak of Covid-19 pandemic. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 7.1 of agreement dated 28.10.2016 executed between the parties, the due date of handing over of possession was provided as 28.10.2020. Grace period of 6 months is allowed being unconditional. The respondent-builder in the instant matter has already obtained the occupation certificate of the complainant unit from the competent authority on 06.02.2023. Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation.
35. As far as the relaxation pertaining to the Covid 19 period is concerned, 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 and respondent-promoter 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.

**F.III Objection regarding the delay in payment.**

36. Another objection raised by the respondent regarding delay in payment by many allottees is totally invalid because the allottees have already paid the amount of Rs.64,48,142/- against the total sale consideration of Rs.60,22,671/- to the respondent. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainant in the instant case. As per the payment plan 5% of BSP+ Registration and other applicable charges were to be paid at the time of offer of possession. However, the respondents have offered the offer of possession but actual possession has not been handed over till date. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainant has paid all the instalments as per payment plan duly agreed upon by the complainants while signing the agreement. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

**G. Findings on relief sought by the complainants:**

**G.I Direct the respondent to handover the physical possession of the unit in a time bound manner and to pay delayed possession interest to the complainant.**

37. As per documents available on record, the respondent has offered the possession of the allotted unit on 13.02.2023 after obtaining occupation certificate from competent authority on 06.02.2023. The complainant took a

plea that offer of possession was to be made in made in 2020, but the respondent has failed to handover the physical possession of the allotted unit.

38. 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**

*"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."*

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

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

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

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

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

40. 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

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and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

41. 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., 21.12.2023 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
42. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 7 of the buyer's agreement executed between the parties on 28.10.2016, and the due date of as per buyer's agreement as 28.10.2020. Occupation certificate was granted by the concerned authority on 06.02.2023 and thereafter, the possession of the subject flat was offered to the complainant on 13.02.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.10.2016 to hand over the physical possession within the stipulated period.
43. 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 06.02.2023. The respondent offered the possession of the unit in question to the complainant only on 13.02.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the



complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she 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

44. In view of the above, the respondent/promoter is directed to complete the work of the subject unit in all aspect remaining, if any and handover physical possession of the unit to the complainant within a period of one month from the date of this order.
45. 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.
46. Moreover, the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by *Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra)*.

**G.II Direct the respondent to pay sum of Rs. 50,000/- to the complainant towards the cost of the litigation.**

47. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. 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*, has 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

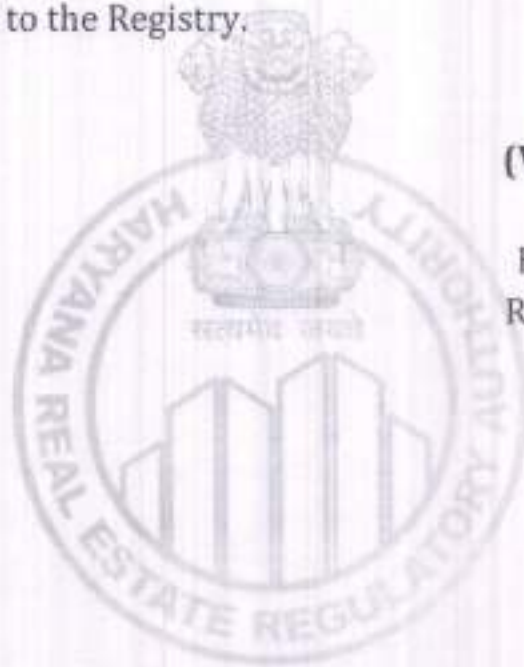
**H. Directions issued by the Authority:**

48. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- I. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of interest i.e. 10.85% p.a. for every month of a delay from the due date of possession i.e., 20.10.2020 till the date of offer of possession i.e. 13.02.2023 plus two months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
  - II. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - III. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.



- IV. A relief of 6 months is given equally to both the complainant/allottee and the respondent/promoter and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020.
- V. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
49. Complaint stands disposed of.
50. File be consigned to the Registry.

Dated: 16.05.2024



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

**HARERA**  
**GURUGRAM**