

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

 Date of decision: **04.07.2024**

NAME OF THE BUILDER		M/S APEX BUILDWELL PRIVATE LIMITED	
PROJECT NAME		"OUR HOMES"	
S. No.	Case No.	Case title	Appearance
1	CR/1246/2022	Vijay Pal Singh V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
2	CR/1253/2022	Asha Rani Yadav V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
3	CR/1247/2022	Pradeep Kumar V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
4	CR/1442/2022	Sandeep Singh V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
5	CR/1250/2022	Sandeep V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
6	CR/1251/2022	Dhananjay Singh V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
7	CR/1245/2022	Nageshwari V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent
8	CR/1741/2022	Neha Khosa V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Ms. Tanya Advocate for the respondent

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of all the 8 complaints titled as above filed before the 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, "**Our Homes**" (plotted colony) being developed by the same respondent/promoter i.e., Apex Buildwell Private Limited. The terms and conditions of the buyer's agreements fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest and the compensation.
3. The details of the complaints, reply to 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: Our Homes, Sector-37C, Gurugram

Possession clause: Clause 3(a)

That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the

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developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment **within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans** and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.

Note:

- 1. Date of commencement of construction of the project-** Date of commencement of construction is calculated from date of consent to establish as admitted by the respondent in its reply and the same was obtained on 02.12.2013 from the competent authority. Therefore, date of commencement of construction comes out to be 02.12.2013.
- 2. Grace period-** Since possession clause 3(a) of the BBA incorporates unqualified reason for grace period/extended period of 6 months. Accordingly, the authority literally interpreting the same, allows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 3(a) of buyer's agreement is allowed and included while calculating the due date of handing over of possession.
- 3. Due date of handing over of possession-** As per clause 3(a) of buyer's agreement, the due date of handing over of possession is 36 months from date of commencement of construction and as specified above, date of start of commencement is 02.12.2013. Therefore, due date of handing over of possession including 6 months of grace period comes out to be **02.06.2017**.
- 4. Occupation certificate-** Details of occupation certificate obtained has been detailed as follows

A. 29.11.2019	B. 24.02.2020
For- Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers)	For- Type-1 (16 nos. towers) & Commercial

5. Conveyance deed-

Sr. no	Complaint no. /title/ date of filing complaint/date of reply received	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of Possession, offer of possession, possession certificate and	Total sale consideration and amount paid by the Complainant (s)	Relief Sought

				conveyance deed.		
1.	CR/1246/2022 titled as Vijay Pal Singh V/s Apex Buildwell Private Limited DOR- 11.04.2022 Reply received on- 09.09.2022	430 on 4th floor, tower- Rose admeasuring 48 sq. mtrs. {As per page no. 24 of complaint}	24.01.2013 {As per page no. 21 of complaint}	02.06.2017 Offer of possession- 01.12.2019 {As per page no. 21 of reply} Possession certificate- 20.12.2019 {As per page no. 16 of complaint} Conveyance deed- 30.06.2020 {As alleged by complainant on page no. 11 of complaint}	TSC: Rs.16,00,000/- {As per page no. 24 of complaint} AP: Rs.16,00,000/- {As per SOA dated 21.09.2016 and receipt dated 23.11.2016 on page no. 17 & 18 of complaint}	1. DPC 2. Litigation expenses of Rs. 21,000/- 3. Audit of building construction.

2.	<p>CR/1253/2022 titled as Asha Rani Yadav V/s Apex Buildwell Private Limited</p> <p>DOR- 11.04.2022</p> <p>Reply received on- 09.09.2022</p>	<p>484 on 4th floor, tower- Iris admeasuring 48 sq. mtrs.</p> <p>(As per page no. 20 of complaint)</p>	<p>25.09.2013</p> <p>(As per page no. 17 of complaint)</p>	<p>02.06.2017</p> <p>Offer of possession- 11.03.2020</p> <p>(As per page no. 20 of reply)</p> <p>Possession certificate- 04.07.2020</p> <p>(As per page no. 71 of complaint)</p> <p>Conveyance deed- 22.12.2020</p> <p>(As per page no. 49 of complaint)</p>	<p>TSC: Rs.16,00,000/-</p> <p>(As per page no. 20 of complaint)</p> <p>AP: Rs.16,00,000/-</p> <p>(As per conveyance deed on page no. 48 of complaint)</p>	<p>1. DPC</p> <p>2. Litigation expenses of Rs. 21,000/-.</p> <p>3. Audit of building construction.</p>
3.	<p>CR/1247/2022 titled as Pardeep Kumar V/s Apex Buildwell Private Limited</p> <p>DOR- 13.04.2022</p> <p>Reply received on- 09.09.2022</p>	<p>814 on 8th floor, tower- Jasmin admeasuring 48 sq. mtrs.</p> <p>(As per page no. 37 of complaint)</p>	<p>27.02.2013</p> <p>(As per page no. 34 of complaint)</p>	<p>02.06.2017</p> <p>Offer of possession- 01.12.2019</p> <p>(As per page no. 21 of reply)</p> <p>Possession certificate- 20.12.2019</p> <p>(As per page no. 16 of complaint)</p> <p>Conveyance deed- 16.07.2020</p> <p>(As per page no. 31 of complaint)</p>	<p>TSC: Rs.16,00,000/-</p> <p>(As per page no. 37 of complaint)</p> <p>AP: Rs.16,00,000/-</p> <p>(As per conveyance deed on page no. 30 of complaint)</p>	<p>1. DPC</p> <p>2. Litigation expenses of Rs.21,000/-.</p> <p>3. Audit of building construction.</p>

4.	CR/1442/2022 titled as Sandeep Singh V/s Apex Buildwell Private Limited DOR- 21.04.2022 Reply received on- 09.09.2022	959 on 9th floor, tower- Orchid admeasuring 48 sq. mtrs. (As per page no. 43 of complaint)	25.11.2013 (As per page no. 40 of complaint)	02.06.2017 Offer of possession- 01.03.2020 (As per page no. 22 of reply) Conveyance deed- 06.06.2023 (As per documents filed by respondent 27.06.2024)	TSC: Rs.16,00,000/- (As per page no. 43 of complaint) AP: Rs.17,87,140/- (As alleged by the complainant on page no. 12 of complaint)	1. DPC 2. Litigation expenses of Rs. 21,000/- 3. Audit of building construction. 4. Maintenance charges of Rs. 1,87,140/-
5.	CR/1250/2022 titled as Sandeep V/s Apex Buildwell Private Limited DOR- 12.04.2022 Reply received on- 09.09.2022	399 D on 3rd floor, tower- Iris admeasuring 48 sq. mtrs. (As per page no. 16 of complaint)	11.09.2013 (As per page no. 14 of complaint)	02.06.2017 Offer of possession- 11.03.2020 (As per page no. 21 of reply) Conveyance deed- 15.07.2020 (As per page no. 49 of complaint)	TSC: Rs.16,00,000/- (As per page no. 16 of complaint) AP: Rs.16,00,000/- (As per conveyance deed on page no. 48 of complaint)	1. DPC 2. Litigation expenses of Rs. 21,000/- 3. Audit of building construction.

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6.	<p>CR/1251/2022 titled as Dhananjay Singh V/s Apex Buildwell Private Limited</p> <p>DOR- 12.04.2022</p> <p>Reply received on- 09.09.2022</p>	<p>930 on 9th floor. tower- Rose admeasuring 48 sq. mtrs.</p> <p>(As per page no. 19 of complaint)</p>	<p>09.08.2013 (As per page no. 46 of complaint)</p>	<p>02.06.2017 Offer of possession- 01.12.2019 (As per page no. 22 of reply) Possession certificate- 07.12.2019 (As per page no. 16 of complaint) Conveyance deed- 28.02.2020 (As per page no. 20 of complaint) Tripartite agreement- 09.11.2013 (Pg. 78 of complaint)</p>	<p>TSC: Rs.16,00,000/- (As per page no. 49 of complaint) AP: Rs. 17,83,074/- (As per page no. 17 of complaint)</p>	<p>1 DPC 2.Litigation expenses of Rs. 21,000/- 3 Audit of building construction.</p>
7.	<p>CR/1245/2022 titled as Nargeshwari V/s Apex Buildwell Private Limited</p> <p>DOR- 12.04.2022</p> <p>Reply received on- 09.09.2022</p>	<p>732 on 7th floor. tower- Rose admeasuring 48 sq. mtrs.</p> <p>(As per page no. 56 of complaint)</p>	<p>18.02.2013 (As per page no. 53 of complaint)</p>	<p>02.06.2017 Offer of possession- 01.12.2019 (As per page no. 22 of reply) Possession certificate- 03.12.2019 (As per page no. 14.1 of complaint) Conveyance deed- 28.02.2020 (As per page no. 28 of complaint)</p>	<p>TSC: Rs.16,00,000/- (As per page no. 56 of complaint) AP: Rs.16,00,000/- (As per conveyance deed on page no. 28 of complaint)</p>	<p>1. DPC 2.Litigation expenses of Rs. 21,000/-</p>

8.	CR/1741/2022 titled as Neha Khata V/s Apex Buildwell Private Limited DOR- 13.04.2022 Reply received on- 09.09.2022	627 on 6th floor, tower- Rose admeasuring 48 sq. mtrs. (As per page no. 22 of complaint)	02.09.2013 (As per page no. 19 of complaint)	02.06.2017 Offer of possession- 01.12.2019 (As per page no. 20 of reply) Conveyance deed- 13.10.2023 (As per documents filed by respondent 27.06.2024)	TSC: Rs.16,00,000/- (As per page no. 22 of complaint) AP: Rs.17,78,608/- (As Alleged by the complainant on page no. 12 of complaint)	1. DPC 2. Litigation expenses of Rs. 21,000/- 3. Audit of building construction 4. Conveyance deed.
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOR- Date of receiving complaint

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

CTE- Consent to establish

CD- Conveyance deed

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges the entire amount along with interest and compensation.
- It has been decided to treat the said complaint(s) 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 complaint(s) filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1246/2022 Vijay Pal Singh V/s Apex Buildwell Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

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/1246/2022 Vijay Pal Singh V/S M/s Apex Buildwell Developers Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	Our Homes
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Low-cost group housing project
4.	HRERA registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019
	HRERA registration valid up to	01.12.2019
5.	Allotment letter dated	Not provided on record
6.	Date of apartment buyer agreement	24.01.2013 (As per page no. 21 of the complaint)
7.	Unit no.	430 on 4th floor, tower- Rose (As per page no. 24 of the complaint)

8.	Unit area admeasuring	48 sq. mtrs. (Carpet area) (As per page no. 24 of the complaint)
9.	Possession clause	<p>3(a) Offer of possession</p> <p>That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.</p>
10.	Date of commencement of construction of the project	CTE-02.12.2013 (As per annexure R-4, at page no. 29 of reply)
11.	Due date of possession	02.06.2017 (Calculated from the date of the consent to establish i.e., 02.12.2013 + 6 months grace period) (Grace period of 6 months is allowed)

12.	Total sale consideration	Rs.16,00,000/- (As per page no. 16 of the complaint)
13.	Amount paid by the complainant	Rs.16,00,000/- (As per conveyance deed on page no. 48 of complaint)
14.	Occupation certificate	29.11.2019
15.	Offer of possession	01.12.2019 (As per page no. 21 of reply)
16.	Possession certificate dated	20.12.2019 (As per page no. 16 of the complaint)
17.	Conveyance deed dated	30.06.2020 (As alleged by complainant on page no. 11 of complaint)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. This complaint is preferred under section 31 read with section 18 of the Act, 2016 for the benefit of the complainant, who is buyers in a residential real estate project. By way of this complaint, the complainant seeks the relief of delay possession charges contemplated under section 18 of the Act along with interest deposited towards the total consideration of Rs.16,00,000/- of their respective unit "430 on 4th Floor in Tower- Rose" with interest in the project 'Our Homes' in Sector 37 C, Gurgaon (Haryana).
 - II. That as per clause 3 (a) of the builder buyer's agreement, possession of the dwelling unit was to be delivered by the respondent/promoter within thirty-six months (36) (including a further six (6) months grace period) from the date of commencement of construction of the complex

upon the receipt of all project related approvals including sanction of building plans/ revised plans issuance of the allotment letter.

- III. That the date for giving possession has expired for the complainant of the dwelling unit and the occupation certificate was obtained on 29.11.2019. The complainant has paid allotment money of Rs.16,00,000/- towards the price of the dwelling unit pursuant to the representations made by the respondent. The entire episode and dealings with the respondent have caused much anguish and frustration to the complainants and can no longer afford to wait and are forced to seek delayed possession charges on the entire principal amount paid along with interest.
- IV. That balance of convenience lies in favour of complainant who has invested hard- earned savings with the respondents. Thus, complainant has requested this authority to allow the complaint.
- V. That the complainant is aggrieved by the deficiency of service and unfair trade practices adopted by the respondents. They have grossly aggrieved by their act of not handing over the property/dwelling units even after expiration of the time for delivering such possession.
- VI. That the complainant has invested life savings to make payments to the respondents. The failure of the respondents to deliver possession of the units has caused immense prejudice on the complainant. That the unfair trade practices of the respondents are evident from the fact that if allottees defaulted in making payments of any instalments, the same would have invited forfeiture and cancellation at their option.
- VII. That the facts which make the filing of the present complaint necessary are enumerated herein below:

- a) A apartment-buyer agreement was executed on 24.01.2013, between the complainant (buyer) and respondent (builder).
 - b) According to clause 3 of the A.B.A., the due date comes out to be 36 months from the agreement date, with an additional grace period of 6 months, totalling a deadline of 23.07.2016.
 - c) Subsequently, the conveyance deed was executed between the parties on 30.06.2020, approximately 6 months after the delayed offer of possession.
 - d) Notwithstanding the execution of the conveyance deed, construction activities at the project site continue as evidenced by recent pictures dated 05.03.2022.
 - e) It is pertinent here to mention that no delay possession interest has been paid by the respondent to the complainant for the extended period of possession delay.
- VIII. That the respondents being the builder and marketer respectively are enjoying the substantial amount of consideration paid by the complainant and other allottees of the project. On the other hand, they after having paid substantial amount of consideration towards the unit are still empty handed. They have wasted several years in attempting to purchase a home and have also lost out on other interest yielding investments.
- IX. That the cause of action arose when the respondents failed to handover the possession of the unit as agreed upon. The cause of action is a continuous one and continues to subsist as the respondents has not redressed the grievances of the complainants.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):
- Direct the respondent to pay delay possession charges with prescribed rate of interest.
 - Direct the respondent to pay litigation cost of Rs. 21,000/-
10. 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:

11. The respondents have contested the complaint on the following grounds.
- That is developing a low cost/ affordable housing colony by the name of "Our Homes" on an area admeasuring 10.144 acres falling in the revenue estate of village Gadoli Khurd, Sector 37-C, Gurugram (hereinafter referred to as "the Project"). The complainant approached the respondent and applied for allotment of an apartment on 05.09.2012 which was duly accepted by the respondent. Consequently, the complainant was allotted apartment bearing no. 430, Tower Rose Garden in the project (hereinafter referred to as the "unit") for a sale consideration for Rs. 16,00,000/-. Furthermore, the parties jointly executed an Apartment Buyer's Agreement (hereinafter to as the "ABA") on 24.01.2013 with respect to the unit which encapsulated the agreed terms between the parties.
 - It is submitted that possession of the unit was offered to the complainant on 01.12.2019. It is also crucial to highlight that the complainant has wrongly mentioned the date of 'handing over' of possession i.e., 20.12.2019 (possession certificate dated 20.12.2019) as

the date of 'offer' of possession in order to gain undue advantage of increased period of delay and thus, an inflated interest amount.

- III. That the complainant has incorrectly stated the alleged period of delay in offer of possession to be between 23.07.2016 till 20.12.2019 i.e., 3 years 5 months. It is submitted that as per clause 3 of the ABA as well as the Affordable Housing Policy of Directorate of Town and Country Planning ("DTCP"), the due date for delivery of possession is to be calculated from the date that the last approval/ sanction was obtained. In the present case, the last approval was the consent to establish granted on 02.12.2013 and therefore, accordingly the date of possession as per the ABA would come out to be 02.06.2017 (the date of expiry of stipulated period of 36 months plus 6 months grace period starting from 02.12.2013). It is further reiterated that the offer of possession was made by the respondent to the complainant vide its letter dated 01.12.2019. Thus, the period of delay for the purpose of calculation of interest would range between 02.06.2017 till 01.12.2019, i.e., 2 years 5 months, 29 days.
- IV. It is undisputed that a conveyance deed dated 28.02.2020 has been executed between the complainant and the respondent qua the unit. Therefore, by upon execution of the conveyance deed and taking over physical possession of the unit, the complainant has voluntarily waived off all claims and objections against the respondent qua the unit.
- V. The various reasons as to why the present complaint and the reliefs therein are entirely non-sustainable are briefly adverted to below, without prejudice to one another and in the alternative:

- The alleged delay caused due to force majeure reasons which were beyond the control of the respondent. The delay, if any, in delivery of possession was primarily caused due to inordinate and excessive delay by the DTCP in renewal of respondent's license under the Act. The respondent had applied and was granted license no. 13 of 2012 dated 24.02.2012 by the DTCP, which was valid till 21.02.2016.
- In the present case, the last approval was the consent to establish granted on 02.12.2013. As per the terms of the ABA and the DTCP policy of 2009, the respondent had a period of 3 years to complete construction. In other words, the respondent had 3 years from 02.12.2013, i.e., till 02.12.2016. However, the license of the respondent "expired" in February, 2016, and the respondent was forced to apply for renewal, even though at least 10 months (till December, 2016) were remaining for completing construction. Moreover, in the meanwhile the DTCP itself vide notification dated 30.05.2014, had extended time for completion of construction from 3 years to 4 years. Thus, at the time when the respondent was applying for renewal, it had 1 year and 10 months (22 months) remaining as a matter of right.
- After the respondent's application for renewal on 11.02.2016, the DTCP took an excessive and unreasonable period of 37 months (i.e., more than 3 years) to extend the respondent's license and renewed it only on 26.04.2019. It is submitted that the said period of 37 months ought to be excluded from the calculation of time period for delivery of possession of the apartment.
- Suspension/ restrictions imposed on construction in Haryana by various pollution control authorities. The project was also delayed due

to other force majeure reasons such as the ban on construction activity imposed by the NGT and other pollution control authorities from time to time during the period starting from the November, 2017 till November, 2019. It is submitted that during the said period, construction activity in Gurugram was suspended for a period of 44 days, which delay is absolutely beyond the control of the respondent.

- The respondent was wrongfully deprived of 10 months of construction period which was remaining as on 21.02.2016. The sanction of building plans under the Haryana Building Code and Consent to Establish by the Haryana State Pollution Control Board, Panchkula was granted only on 07.05.2013 and 02.12.2013 respectively. Thus, as also admitted by the complainant, the time for delivery shall start being reckoned from 02.12.2013 only. As per the terms of the ABA and the DTCP policy of 2009, the respondent had a period of 3 years to complete construction. In other words, the respondent had 3 years from 02.12.2013, i.e., till 02.12.2016. Thus, in February, 2016, when the license "expired", the respondent was forced to apply for renewal even though 10 months (till December, 2016) were remaining for completing construction.
- The project was also delayed due to other force majeure reasons such as the ban on construction activity imposed by the NGT and other pollution control authorities lastly in the months of October - November, 2019 in the State of Haryana have further led to delay in completion of the project which are per se beyond the control of the appellant.
- The construction activity was first suspended in Gurugram by the Hon'ble National Green Tribunal vide its orders dated 09.11.2017 and 14.11.2017 in the matter of Vardhaman Kaushik vs. UOI bearing

Original Application no. 21/2014 on account of severe air quality in the NCR region. The construction remained suspended till 17.11.2018 i.e., for a total of 8 days.

- In the year 2018, by the orders of the Haryana State Pollution Control Board dated 14.06.2018. and 24.12.2018, construction in Gurgaon remained suspended for a period of 2 days each. In the same year, the Environment Pollution (Prevention and Control) Authority banned construction in the region for a period of 12 days.
- Furthermore, in the year 2019, Environment Pollution (Prevention and Control) Authority vide its order dated 01.11.2019, 04.11.2019, 11.11.2019 and 13.11.2019 restricted construction activities in Gurugram for a period of 15 days starting from 01.11.2019 till 15.11.2019. Consequently, the State Disaster Management Authority, Haryana also restricted construction activities in the area for a period of 3 days vide its order dated 14.11.2021.
- The respondent had 1 years' additional period for completing construction as per DTCP notification dated 30.05.2014. By virtue of notification dated 30.05.2014 bearing No. PF-70/11350, the DTCP granted all affordable housing projects a period of 4 years for completion starting from the date of approval of the building plans or grant of environmental clearance whichever is later. Furthermore, clause 3 of the ABA notes that the period of 36+6 months is subject to any Act, Notice, Order, Rule, or Notification of the Government, which includes the said notification of 2014 granting 4 years' time. Therefore, the period for completion of the project stood extended by a period of 1 year. It is reiterated that the proposed period of delivery of possession

was extendable under clause 3 of the ABA in circumstances beyond the control of the respondent as in the present case.

VI. That by voluntarily agreeing to the above-mentioned clause 3 of ABA, the Complainant has willingly waived its right to claim compensation from the Respondent in relation to any extension of delivery date on account of valid reasons as mentioned in the said clause. Thus, the prayer seeking interest for delayed possession, if allowed by this Hon'ble Authority would result in varying the terms of the Agreement between the parties. Hence, the said prayer is not maintainable.

12. 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 parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

13. The application of the respondent regarding rejection of complaint on ground 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

14. As per notification no. 1/92/2017-ITCP 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

15. 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.

16. 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** and reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondents

F.I. Objection regarding force majeure conditions:

21. The respondent/promoters have raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as inordinate and excessive delay by the DTCP in renewal of respondent's license under the Haryana Development and Regulation of Urban Areas Act, 1975, suspension/restrictions imposed on construction in Haryana by various pollution control authorities, implementation of various social schemes by Government of India, various orders passed by NGT, etc. But all the pleas

advanced in this regard are devoid of merit. The plea advanced that the developer has failed to handover the possession of project on time as per 'apartment buyer agreement' entered between them on dated 24.01.2013.

22. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, etc but did not particularly specified that for which period such orders has been made operative for. Further, also there may be cases where allottee has not paid instalments regularly but all the allottee cannot be expected to suffer because of few allottee. The orders passed by government or authorities or courts banning construction in the NCR region were for a very short period of time, and such exigencies should have been accounted for at the very inception itself and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. 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. Thus, the promoter respondents cannot be given any leniency on based of aforesaid reasons.

G. Findings on the relief sought by the complainants

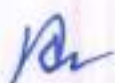
- G.1 Direct the respondent to pay delay possession charges with prescribed rate of interest.**

26. In the instant case instant case, the complainant wishes to continue with the project and is seeking DPC as provided under the proviso to sec 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."

27. The complainant-allottee has paid full amount of Rs. 16,00,000/- against the sale consideration of Rs. 16,00,000/- for the unit in question to the respondent.
28. The promoter has proposed to hand over the possession of the apartment within a period of 36 months (excluding a grace period of 6 months) from the date of issuance of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans. The period of 36 months with a grace period of 6 months expired on 02.06.2017 (calculated from date of consent to establish i.e. 02.12.2013). Since in the present matter, the ABA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
29. As per documents available on record, the respondent has offered the possession of the allotted unit on 01.12.2019 after obtaining the occupation certificate from the competent authority on 29.11.2019. The complainant took a plea that offer of possession was to be made in 2017, but the respondent has failed to handover the physical possession of the allotted unit.
30. **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 of the Act 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 the possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules 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.

31. 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.
32. 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., 04.07.2024 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
33. 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;"

34. 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 3 of the buyer's agreement executed between the parties on 24.01.2013, and the due date of as per buyer's agreement as 02.06.2017. Occupation certificate was granted by the concerned authority on 29.11.2019 and thereafter, the possession of the subject flat was offered to the complainant on 01.12.2019. 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 24.01.2013 to hand over the physical possession within the stipulated period.

35. However, on 27.06.2024 the respondent had filed written arguments and additional documents pertaining to execution of conveyance deed. The respondent addressed the issue that conveyance deed had already been executed between the parties and hence the complainant has no locus standi to file present complaint w.r.t the reason that after execution of conveyance deed, mutual obligations of both the parties stands discharged.

Despite this, it remains undisputed that the respondent failed to provide possession of the unit by the agreed-upon possession date. This failure constitutes a breach of the contractual obligation under clause 3 of the buyer agreement by the respondent/promoter. Consequently, the respondent's failure to fulfil its obligations as per the buyer's agreement to deliver possession within the stipulated period entitles the complainant to claim delayed possession charges as a statutory right. Therefore, based on the aforementioned grounds, the contention of the respondent stands rejected.

36. Furthermore, the respondent in its written arguments relied upon order of Hon'ble Supreme Court in Supertech Ltd. Vs Rajni Singh CA No. 6649-50 of 2018 and contended that since the complainant approached the authority after 3 years of executing the conveyance deed and allegedly slept on their rights and hence no equity should be granted in favor of the complainant. However, it is pertinent to note that the complainant filed their complaint on 11.04.2022. The possession was offered by the respondent/promoter on 01.12.2019 after delay of 1.6 years. The judgment cited by the respondent/promoter pertains to a different scenario where the allottee herself delayed in taking possession after obtaining the occupation certificate. In contrast, in the present case, the complainant timely took possession of the unit and subsequently executed the conveyance deed, fulfilling all obligations under the buyer's agreement. Therefore, the plea of the respondent stands redundant and therefore, not maintainable.

37. 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 19.11.2019. The respondent offered the possession of the unit in question to the complainant only on 01.12.2019, 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 they have 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.

38. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 100% of sale consideration.
39. The promoter is responsible for all the obligations, responsibilities and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to continue with the project, without prejudice to any other remedy available, to pay the delay

possession charges on amount received by him in respect of the unit with interest at such rate as may be prescribed.

40. 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 delayed possession charges at the prescribed rate of interest i.e., @ 10.95% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the due date of possession till the date of offer of possession i.e., 01.12.2019 to the complainant.

G. II Direct the respondent to pay sum of Rs. 21,000/- to the complainant towards the cost of litigation

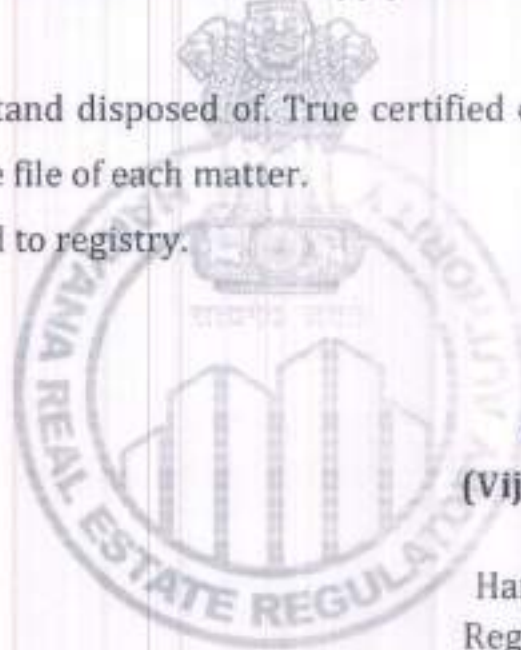
41. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)**, has held that an allottee is entitled to claim compensation & litigation 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.

H. Directions of the authority:

42. 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):

1. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e. 10.95% p.a. for from the due date of possession i.e., 02.06.2017 till the date of offer of possession i.e., 29.11.2019 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.
43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
45. Files be consigned to registry.

Dated: 04.07.2024



V.I - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM