

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

Date of decision: 09.04.2024

NAME OF THE BUILDER		M/s Vipul Ltd.	
PROJECT NAME		"Vipul Lavanya", Sector 81, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/616/2021	Manvendra Pratap Singh & Anr. Vs. M/s Vipul Ltd.	Shri Manish Shukla, Adv. Shri Nishant Jain, Adv.
2.	CR/583/2021	Arun Pandita & Anr. Vs. M/s Vipul Ltd.	Shri Manish Shukla, Adv. Shri Nishant Jain, Adv.

CORAM:Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan**Chairman**
Member
Member**ORDER**

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,



- namely, Vipul Lavanya”, Sector 81, Gurugram, Haryana being developed by the same respondent/promoter i.e., M/s Vipul Ltd. The terms and conditions of the buyer’s agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges and execution of conveyance deed.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

S.no.	Particulars	Details
1.	Project name and location	“Vipul Lavanya”, Sector 81, Gurugram, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	10.512 acres
4.	DTCP License no. and other details	No.: 26 of 2010 dated 18.03.2010 Valid up to: 17.03.2020 Licensed area : 10.512 acres Licensee - Graphic Research Consultant Pvt. Ltd. and 4 others.
5.	HRERA registered/not registered	No.: 15 of 2018 dated 11.09.2018 Validity: w.e.f. September 2018 till 31.08.2019 Registered area : 2.282 acres Number of towers registered: Tower 2 & 3
6.	Occupation certificate obtained on	Not obtained

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S.No.	Particulars	Details w.r.t CR/616/2021	Details w.r.t CR/583/2021
7.	Unit no.	402, 4 th floor, tower 2 (Page 19 of complaint)	203, 2 nd floor, tower 3 (Page 38 of reply)
8.	Unit area admeasuring	1780 sq. ft. (super area) 1184 sq. ft. (carpet area) (Page 41 of reply)	1780 sq. ft. (super area) (Page no. 38 of reply)
9.	Date of allotment letter	02.11.2018 (Page 19 of complaint)	24.09.2010 (Page 19 of complaint, in favour of original allottee Mr. Surinder Pal Singh)
10.	Date of flat buyer's agreement	02.11.2018 (Page no. 20 of the complaint)	10.12.2010 (Page no. 36 of the reply, Between original allottee Mr. Surinder Pal Singh and the respondent)
11.	Agreement to sell	Not Applicable	20.01.2012 [Page 21 of complaint, executed between the original allottee and the complainants herein] And the same was acknowledged by the respondent vide nomination letter dated 03.02.2012, page 20 of complaint

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12.	Possession clause	<p>8. Possession</p> <p>8.1 Time of handing over the Possession</p> <p>Subject to terms of this clause and subject to the VENDEE(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 complied with all provisions, formalities, documentation etc., as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat by August 2019 unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals & permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to</p>	<p>8.1 Time of handing over the Possession</p> <p>Subject to terms of this clause and subject to the VENDEE(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 complied with all provisions, formalities, documentation etc., as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat within a period of 36 (Thirty Six) months from the date of signing of this Agreement. The VENDEE(S) agrees and understands that the VENDOR shall be entitled to a grace period of 90 days, after the expiry of 36 (Thirty Six) months, for applying and obtaining the occupation certificate in respect of the GROUP HOUSING COMPLEX</p> <p>(Page 43 of reply)</p>
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		timely payments by the VENDEE(S), in terms hereof. (Page 44 of reply)	
13.	Due date of possession	31.08.2019	10.12.2013 Note: Grace period is not included
14.	Total sale consideration	Rs. 75,65,169/- (As per payment schedule at page 51 of reply)	Rs. 65,33,486/- (As per statement of account dated 23.02.2021 at page 74 of reply)
15.	Amount paid by the complainants	Rs. 52,95,618/- (As alleged by the complainants at page 7 of complaint)	Rs. 65,57,095/- (As per statement of account dated 23.02.2021 at page 74 of reply)
16.	Occupation certificate /Completion certificate	Not obtained	Not obtained
17.	Offer of possession (fit-out/ permissive possession)	As per reply of the respondent, the possession for fit-out was offered vide email dated 09.10.2019.	Vide email dated 23.02.2021. (Page 72 of reply)

4. The aforesaid complaints were filed by the complainant-allottees against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges and execution of conveyance deed.



5. The facts of all the complaints filed by the complainant-allottees are similar. Out of the above-mentioned cases, the particulars of lead case **CR/616/2021 titled as Manvendra Pratap Singh and anr. Vs. M/s Vipul Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

6. 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/616/2021 titled as Manvendra Pratap Singh and anr. Vs. M/s Vipul Ltd.

S. No.	Particulars	Details
1.	Name of the project	"Vipul Lavanya", Sector 81, Gurugram, Haryana
2.	Project area	10.512 acres
3.	Nature of the project	Group Housing Complex
4.	DTCP license no. and validity status	No.: 26 of 2010 dated 18.03.2010 Valid up to: 17.03.2020 Licensed area : 10.512 acres Licensee - Graphic Research Consultant Pvt. Ltd. and 4 others.
5.	RERA Registered/ not registered	No.: 15 of 2018 dated 11.09.2018 Validity: w.e.f. September 2018 till 31.08.2019 Registered area : 2.282 acres Number of towers registered: Tower 2 & 3
6.	Occupation certificate	Not obtained



7.	Unit no.	402, 4 th floor, tower 2 (Page 19 of complaint)
8.	Unit area admeasuring	1780 sq. ft. (super area) 1184 sq. ft. (carpet area) (Page 41 of reply)
9.	Date of allotment letter	02.11.2018 (Page 19 of complaint)
10.	Date of flat buyer's agreement	02.11.2018 (Page 20 of the complaint)
11.	Possession clause	8. Possession 8.1 Time of handing over the Possession Subject to terms of this clause and subject to the VENDEE(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 complied with all provisions, formalities, documentation etc., as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat by August 2019 unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals & permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to timely payments by the VENDEE(S), in terms hereof. (Page 44 of reply)
12.	Due date of possession	31.08.2019
13.	Total sale consideration	Rs. 75,65,169/-



		(As per payment schedule at page 51 of reply)
14.	Amount paid by the complainants	Rs. 52,95,618/- (As alleged by the complainants at page 7 of complaint)
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession (fit-out)	Undated (Page 31 of reply) Note: As per reply of the respondent, the possession for fit-out was offered vide email dated 09.10.2019

B. Facts of the complaint

7. The complainants have made following submissions in the complaint:
- That the complainants had purchased the flat from the respondent and entered into an agreement on 02.11.2018 with the complainants towards allotment of flat no. 402, measuring 1184 sq. ft., tower no. 2, at "Vipul Lavanya" project situated at Sector 81, Gurugram, Haryana. The total sale consideration of the flat was Rs.75,65,169/- exclusive taxes and including all other charges and the complainants had paid total sum of Rs.52,95,618/- and the flat was supposed to be delivered by March, 2019 but till date possession has not been given to the complainants. The complainants have never defaulted in making payment to the respondent company and all the instalments were made timely.
 - That the complainants are the owners of their respective flats but not legal owner of the said property unless the occupation certificate and conveyance deed is registered or issued by the relevant authorities in favour of the complainants. The occupation certificate shows that the



- building has been a completed as per the sanction plan. The respondent company has not even offered the possession of the said flat despite several years have been passed and that the complainants have been overburdened with loans, rental and other daily expenses.
- iii. That in various judgement passed by this hon'ble authority, it has been held that the builder developer have to obtain the occupation certificate for build towers in project and handover the same to the respective allottees. In the present case, the respondent promoter has failed to give possession and obtain occupancy certificate. Thus, it is prayed that this honourable authority may be pleased to direct the respondent to compensate for the delay in getting the OC and offer possession and till such time the registered conveyance deed is to be executed in favour of the complainants.
- iv. That this hon'ble authority has also ruled that developers cannot use the force majeure clause for lack of approvals, financial crises and directed the builders to obtain the occupancy certificate for the building or pay an interest amount to residents of the building.
- v. That the complainants have diligently followed up with the respondent regarding the aforesaid possession of flat and OC/conveyance deed approvals but every time the respondent repeated long extensions for these aforesaid approvals and certificate.
- vi. That the respondent keeps delaying in offer possession and the occupancy certificate of the project and failed to give occupancy certificate of the said unit on the agreed terms and conditions. The complainants have also sent various representation and request in this regard but the respondent has not obtained occupancy certificate till date. Hence, the present complaint for seeking the following reliefs.

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C. Relief sought by the complainants

8. The complainants have sought the following relief(s):

- I. Direct the respondent to give possession with interest and get the occupancy certificate from the concerned authority for registering the conveyance deed in favour of the complaint.
 - II. Pay the interest@18% p.a. compensation and damages for the financial losses harassment and mental agony as deemed fit by this Hon'ble court on account of non-fulfilment of terms and conditions and non-issuance of occupancy certificate.
 - III. Any other relief which this hon'ble authority deems fit and proper under the facts and circumstances of the case may kindly be passed in favour of the complainants and against the respondent.
9. 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

10. The respondent is contesting the complaint on the following grounds:

- i. That the companies namely M/s Graphic Research Consultants Pvt. Ltd. had acquired and purchased the land admeasuring 10.512 acres situated within the revenue estate of village Nawada Fatehpur, Sector 81, Gurgaon with the intention to promote and develop a group housing colony over the same. The owner companies have obtained license from the DTCP for setting up a group housing colony over the aforesaid land.
- ii. That M/s Vipul Ltd. had inter-se entered into agreement with the owner companies in terms of which the M/s Vipul Ltd. is entitled to develop a group housing colony on the land admeasuring 10.512 acres situated in



Sector-82, Gurugram, Haryana. Pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the group housing project by the name of "Vipul Lavanya".

- iii. That it is matter of record that some third parties had filed litigation titled as Vardhman Kaushik v/s Union of India & ors. wherein the Hon'ble NGT while considering the degradation of environment was pleased to restrain or stop the construction activity in the region of Delhi and NCR. It is pertinent to mention here that Government of Haryana was a party and is well aware of the entire litigation and certain directions to all the developers to stop the construction work. The company through letters, individually to all its allottees including the complainants, informed about the stoppage of work of the aforesaid project. But when the restrain order got vacated the company again started construction of the project and thereafter applied for occupation certificate from the competent authority vide its letter dated 03.04.2018 and the respondent is hopeful that it will soon get the certificate for occupation from the competent authority. Upon the grant of the occupation certificate, the conveyance deed shall be executed.
- iv. That the statement of objects and reasons of the Act inter-alia is an attempt to balance the interests of consumers and promoters by imposing certain responsibilities on both. It is submitted that the complainants have never been at all aggrieved and do not fall under the definition of aggrieved person, but still by filling such false, frivolous and vexatious complaint, the complainants are not only harassing the respondent company to succumb to their illegal demand, but by filing such false complaint, they are misleading the Hon'ble Authority.

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- v. That the complaint filed by the complainants pertains to the compensation. The complaints were required to be filed before the Adjudicating Officer under rule 29 of the rules for compensation. That as per section 31 of the Act, the aggrieved person may file the complaint before the Authority or the Adjudicating Officer as the case may be for any violation and contravention of the provisions of the Act or the rules and regulations made thereunder, but the above provisions show that the Authority and Adjudicating Officer have their own separate scope as prescribed in the Act and the Rules. The Adjudicating Officer is empowered to adjudicate the compensation under section 12, 14, 18 and 19 of the Act, which is to be determined as per the factors provided in section 72 of the Act. Thus, in light of above facts, the present complaint deserves to be dismissed.
- vi. That the building has been completed as per the sanctioned plans and the permissive possession of the subject flat has been offered to the complainants vide email dated 09.10.2019 for interior work/ fit out. Further, the respondent has several time intimated to the complainants about pendency of occupation certificate with the concerned authority. The grant of occupation certificate is beyond the control of the respondent and there is no delay on the part of the complainant.

E. Jurisdiction of the authority

11. The respondent has raised a preliminary submission/ objection that the authority has no jurisdiction to entertain the present complaint. The objection 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.

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D.I Territorial jurisdiction

12. 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

13. 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.

14. 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.



15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief in the present matter in view of the judgment passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 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."

16. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017."

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24) *The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.*

25) *In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."*

17. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain the present complaint.

F. Findings on the relief sought by the complainants

- F.I Direct the respondent to give possession with interest and get the occupancy certificate from the concerned authority for registering the conveyance deed in favour of the complainant.
18. In the present complaint, the grievance of the complainants is that the respondent has failed to handover the physical possession and is seeking interest for delay in handing over possession.
19. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under:-

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"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."

20. Clause 8.1 of the buyer's agreement (in short, the agreement) dated 02.11.2018, provides for handing over possession and the same is reproduced below:

"8. Possession

8.1 Time of handing over the Possession

Subject to terms of this clause and subject to the VENDEE(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 complied with all provisions, formalities, documentation etc., as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat by August 2019 unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals & permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to timely payments by the VENDEE(S), in terms hereof."

21. **Due date of handing over possession:** As per clause 8.1 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit by August 2019 Therefore, the due date of handing over possession comes out to be 31.08.2019.
22. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at

such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

23. 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.
24. 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., 09.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
25. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "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;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made by both the parties 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. The possession of the unit was to be delivered by 31.08.2019. However, the respondent has failed to handover possession of the subject apartment/unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
28. It is pertinent to mention here that the present complaint was disposed of by the authority vide order dated 13.10.2021 whereby the DPC was allowed from the due date of possession i.e., 11.05.2017 and till offer of possession plus two months i.e., 24.12.2019 as per provisions of section 19(10) of the Act. While preparing the detailed order, certain clerical errors in proceedings dated 13.10.2021 were brought to the knowledge of the authority. Thus, the authority has suo-moto moved the noting for rectification of proceedings dated 13.10.2021 w.r.t the date of receipt of occupation certificate.
29. The authority observes that the respondent has admitted in its reply that the respondent has although applied for the occupation certificate to the competent authority on 13.04.2018 however, the same has not been



granted to till date. Further during proceedings dated 23.01.2024, the counsel for the respondent again clarified that the occupation certificate in respect of the subject unit has not been obtained although the same stands applied to the competent authority but is not yet granted. Further an offer of possession has been made to the complainant-allottees on 09.10.2019 for undertaking interior works but the allottee has not yet taken the actual physical possession. Thereafter, vide order dated 27.02.2024, both the parties were again directed to clarify whether the possession has been taken over by the complainant-allottees within one week. However, no document has been filed by either of the parties so far. However, during the proceedings on 09.04.2024, the counsel for the respondent confirms that although an offer of possession for fit out was made on 09.10.2019 but the complainant-allottees have not yet taken the possession. The said status is also acknowledged and confirmed by the proxy counsel of the complainants.

30. 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 has not been obtained by the respondent till date. The respondent has offered the possession of the subject unit(s) to the complainants vide email dated 09.10.2019 and the same cannot be considered as valid in the eyes of law as the same has been made without obtaining occupation certificate from the competent authority. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants 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.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at the prescribed rate i.e., @10.85% p.a. w.e.f. due date of possession i.e., 31.08.2019 till a valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or handing over of possession, whichever is earlier, as per sections 18(1) and 19(10) of the Act read with rule 15 of the rules.
32. The following table concludes the time period for which the complainant-allottees are entitled to delayed possession charges in terms of the aforesaid direction:

S. no.	Complaint no.	Amount paid by the allottees	Due date of possession	Status of occupation certificate	Period for which the complainants are entitled to DPC
1.	CR/616/2021	Rs. 52,95,618	31.08.2019	Not obtained till date	31.08.2019 till a valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or handing over of possession
2.	CR/583/2021	Rs. 65,57,095	10.12.2013	Not obtained till date	10.12.2013 till a valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or handing over of possession

Possession

33. The authority observes that section 17 of the Act obligates the promoter to handover the physical possession of the subject plot/unit complete in all respect as per specifications mentioned in BBA and thereafter, the

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complainants-allottees are obligated to take the possession within 2 months as per provisions of section 19(10) of the Act.

34. In view of the above, the respondent is directed to handover the possession of the allotted unit/plot to the complainants complete in all aspects as per specifications of buyer's agreement within two months from receipt of occupation certificate and after payment of outstanding dues, if any.

Execution of conveyance deed

35. Section 17(1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

36. Further, no occupation certificate has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
37. The respondent/promoter is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining occupation certificate from the competent authority. Hence, respondent is directed to execute the conveyance deed in favour of complainants within three months from the date of issuance of occupation certificate upon payment of outstanding

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dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.

F.II Pay the interest@18% p.a. compensation and damages for the financial losses harassment and mental agony as deemed fit by this Hon'ble court on account of non-fulfilment of terms and conditions and non-issuance of occupancy certificate.

38. The complainants are also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 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, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

39. 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-promoter is directed to pay interest to the complainants against the paid-up amount as detailed in para 32 of this order at the prescribed rate of 10.85% p.a. for every month of delay

from the due date of possession till a valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority 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. The due date of possession, amount paid by the allottees and the date of entitlement of delay possession charges in respect both the complaints are detailed in table given in para 32 of this order.

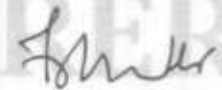
- ii. The arrears of such interest accrued from 31.08.2019 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent is directed to handover the possession of the allotted unit/plot to the complainants complete in all aspects as per specifications of buyer's agreement within two months from receipt of occupation certificate and after payment of outstanding dues, if any.
- iv. The respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants within three months from the date of issuance of occupation certificate upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.
- 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 which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
41. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
42. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.04.2024