

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

Date of decision: 02.08.2024

NAME OF THE BUILDER		M/S APEX BUILDWELL PRIVATE LIMITED	
PROJECT NAME		"OUR HOMES"	
S. No.	Case No.	Case title	Appearance
1	CR/6975/2022	Satvir Singh V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Shri Harshit Batra Advocate
2	CR/6971/2022	Manoj Kumar Yadav V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Shri Harshit Batra Advocate
3	CR/6974/2022	Punam Yadav V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Shri Harshit Batra Advocate
4	CR/6973/2022	Atmaram Yadav V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Shri Harshit Batra Advocate
5	CR/7145/2022	Mahinder Pal and Ramesh Chand V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Shri Harshit Batra Advocate
6	CR/6978/2022	Sandeep Kumar and Anju Bala V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar Advocate and Shri Harshit Batra Advocate

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of all the 6 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(1)

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.

Note:

1. 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.

2. Occupation certificate- 29.11.2019

3. Due date of possession: 26.12.2016 36 months from the date of environment clearance i.e., 26.06.2013 + 6 months grace period allowed being unqualified.

(In advertently mentioned in the proceedings dated 02.08.2024 as 26.06.2017)

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	Offer of possession and conveyance deed.	Basic sale consideration and amount paid by the Complainant
1.	CR/6975/2022 Satvir Singh V/S M/s Apex Buildwell Pvt. Ltd. DOF: 14.11.2022 RR : 20.11.2023	320, Tower-Jasmine, 3 rd Floor Area- 48 sq. mtr.	25.01.2013 (Pg. 16 of complaint)	01.12.2019 (Pg. 25 of reply) 02.09.2021 (Pg. 50 of compliant)	BSC: Rs. 16,00,000/- AP: Rs. 17,69,726/-
2.	CR/6971/2022 Manoj Kumar Yadav V/S M/s Apex Buildwell	896, Tower IRIS, 8 th floor Area- 48 sq. mtr.	12.03.2013 (Pg. 16 of complaint)	11.03.2020 (Pg. 25 of reply) 25.03.2021	BSC: Rs. 16,00,000/- AP: Rs. 18,38,910/-

	Pvt. Ltd. DOF: 14.11.2022 RR : 20.11.2023			(Pg. 51 of compliant)	
3.	CR/6974/2022 Punam Yadav V/S M/s Apex Buildwell Pvt. Ltd. DOF: 14.11.2022 RR : 20.11.2023	318, Tower Jasmine , 3 rd floor Area- 48 sq. mtr.	25.01.2013 (Pg. 17 of complaint)	01.12.2019 (Pg. 25 of reply) 30.06.2020 (Pg. 51 of compliant)	BSC : Rs. 16,00,000/- AP : Rs. 16, 00 000/-
4.	CR/6973/2022 Atmaram Yadav V/S M/s Apex Buildwell Pvt. Ltd. DOF: 18.11.2022 RR : 20.11.2023	317, Tower Jasmine , 3 rd floor Area- 48 sq. mtr.	25.01.2013 (Pg. 16 of complaint)	01.12.2019 (Pg. 26 of reply) 08.06.2020 (Pg. 75 of compliant)	BSC : Rs. 16,00,000/- AP : Rs. 16, 00 000/-
5.	CR/7145/2022 Mahender Pal and Ramesh Chand V/S M/s Apex Buildwell Pvt. Ltd. DOF: 18.11.2022 RR : 20.11.2023	417, Tower Jasmine , 4 th floor Area- 48 sq. mtr.	28.01.2013 (Pg. 17 of complaint)	01.12.2019 (Pg. 26 of reply) 13.02.2020 (Pg. 50 of compliant)	BSC : Rs. 16,00,000/- AP : Rs. 17, 75 136/-
5.	CR/6978/2022 Sandeep Kumar and Anju Bala V/S M/s Apex	421, Tower Rose , 4 th floor Area- 48 sq. mtr.	07.07.2014 (Pg. 43 of complaint)	01.12.2019 (Pg. 29 of reply) 19.06.2020	BSC : Rs. 16,00,000/- AP : Rs. 17, 75 136/-

Buildwell Pvt. Ltd.			(Pg. 20 of compliant)	
DOF: 18.11.2022 RR : 20.11.2023				
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviations Full form</p> <p>DOF- Date of filing</p> <p>BSC- Basic Sale consideration</p> <p>AP- Amount paid by the allottee</p>				
<p>Relief Sought:-</p> <ol style="list-style-type: none"> 1. Delay possession charges with prescribed rate of interest. 2. Litigation Charges of Rs.21,000/- 				

4. 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.
5. 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/6975/2022 Satvir 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/6975/2022 Satvir Singh V/S M/s Apex Buildwell Developers Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	Our homes Sector-36 C, Gurugram.
2.	Project area	10.144 acres
3.	DTPC license no. & validity status	13 of 2012 dated 22.02.2012
4.	Nature of project	Affordable Group Housing Colony
5.	HRERA registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019
	HRERA registration valid up to	01.12.2019
6.	Unit no. / Area admeasuring	320, Tower- Jasmine, 3 rd floor, 48 sq. mtr. (Page no. 19 of complaint)
7.	Date of builder buyer agreement	25.01.2013 (Page no. 16 of complaint)
8.	Building Plan Approval	07.05.2013 (Page no. 52 of complaint)
9.	Environmental Clearance	26.06.2013 (as per the information provided by

		the respondent at the time of registration)
10.	Possession clause	3. Possession 3(1) Developer proposes to hand over the possession of the apartment within a period of thirty-six months (36), with a grace period of 6 month , from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans.
11.	Due date of possession	26.12.2016 (In advertently mentioned in the proceedings dated 02.08.2024 as 26.06.2017) (Note: due date is calculated from the date of environmental clearance i.e., 26.06.2013 being later)
12.	Basic sale consideration	Rs. 16,00,000/- (Page no 19 of the complaint)
13.	Amount paid	Rs. 17,69,726/- (page no 22 of reply)
14.	Occupation certificate	29.11.2019 (Page no. 23 of reply)
15.	Offer of possession	01.12.2019 (Page no 25 of reply)
16.	Conveyance deed	02.09.2021 (Page no. 50 of complaint)

B. Facts of the complainants

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

- I. That the buyer's agreement was executed between the respondent and the complainant on 25.01.2013. The due date was as per clause 3 (a) which is that the possession will be handed over within 36 months + 6 months grace period, but unfortunately there is a delay of 4 years and 5 months.
 - II. The occupation certificate was received by the respondent on 29.11.2019 and the possession was offered to the complainant on 01.12.2019. further the conveyance Deed is registered with Sub-Registrar vide dated 02.09.2021.
 - III. That the project site even a lapse of more than 5 Years construction activity is still going on. The Home Allottees are in fear after instance Chantal's Incident Society.
 - IV. That the complainant has filed the present complaint in the Authority to ask the respondent to clear delay possession interest as apartment buyer agreement executed dated 25.01.2013 and possession as per clause 3 date 36 months +6 months grace period i.e. 25.01.2016 (excluding grace period).
- C. Relief sought by the complainants: -**
9. The complainant has sought following relief(s):
 - a. Direct the respondent to pay delay possession charges with prescribed rate of interest.
 - b. 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.

- I. That the complainant, namely, Satbir Singh approached the respondent and expressed their interest in booking of an apartment in the low cost/affordable group housing project developed by respondent known as "our homes" situated in sector 36 C , Gurgaon, Haryana . The complainant, vide an application form dated 05.09.2012 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 320, located on the 3th Floor, Tower- Jasmine along with one car parking was allotted to the complainant.
- II. Thereafter, a buyer's agreement dated 25.01.2013 was executed between the complainant and the respondent. As per Clause 3(a) of the buyer's agreement dated 25.01.2013, the due date of possession of the unit in question was 36 months from date of commencement of construction upon the receipts of all project related approvals along with a grace period of 6 months.
- III. That as the complainant has considered the date of BBA as start date, the due date in such case comes out to be 25.07.2016. However, it is pertinent to mention here that the due date/possession clause provided under clause 3 of the builder buyer agreement was subjective in nature and hence shall depend on the allottee/complainant complying all the terms and conditions of the agreement.

- IV. That as per the customer ledger dated 12.08.2023, an outstanding amount of rs.11,800.32/- is pending on the part of the complainant till date on account of charges including but not limited to legal and administrative charges demanded at the time of offer of possession.
- V. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated herein below :

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction

		<p>registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.</p>			<p>activity. The order had completely hampered the construction activity.</p>
2.	19 th July 2016	<p>National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from</p>	<p>Till date the order in force and no relaxation has been given to this effect.</p>	30 days	<p>The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply</p>

		the concerned authorities and have the Environment Clearance from the competent Authority.			and price of ready mix concrete required for construction activities.
8th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8th Nov, 2016 to 15th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.	
7th Nov,	Environment	Till date	90 days	The bar for the	

2017	<p>Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7th Nov 2017 till further notice.</p>	<p>the order has not been vacated</p>	<p>closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid</p>
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					bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
	• 9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th 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 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects.		9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

		The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.			
•	29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.



		Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.			
•	24 th July, 2019	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		30 days	Th directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently

		relatable to the cost of restoration.			affected the pace of construction.
11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days		On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
			Total days	377 Days	

VI. That from the facts indicated above, it is comprehensively established that a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 Pandemic,

as noted above. It is well recognized that one day of hindrance in the construction industry leads to a gigantic delay and has a deep effect on the overall construction process of a real estate project.

- VII. . That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application before the concerned authority and successfully attained the occupation certificate dated 29.11.2019. After receiving of the occupation certificate, the possession of the said unit was lawfully offered to the complainant vide offer of possession dated 01.12.2019.
- VIII. That thereafter the physical possession was taken by the complainant without any demur. It is now, after over 3 years of the offer of possession that the complainant has approached the ld. authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent.
- IX. That moreover, after giving the lawful possession of the unit to the complainant, the conveyance deed dated 02.09.2021 was also executed between the complainant and the respondent. It is submitted that after execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. After the execution of the conveyance deed, the parties are estopped from making any claims at this instance. It is a settled matter of law that: the necessary condition is the detriment of the other party by the conduct of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right.

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. I Territorial jurisdiction

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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 , 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 25.01.2013.
22. 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, 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 amount of Rs. 17,69,726/- 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 with 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 expired on 26.06.2016 (calculated from date of environment clearance i.e. 26.06.2013). 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. Therefore, the due date of possession comes out to be 26.12.2016

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. Thereafter executed conveyance deed in favour of complainant on 02.09.2021.

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., 02.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

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 25.01.2013, and the due date of possession as per buyer's agreement comes out to be 26.12.2016. 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 25.01.2013 to hand over the physical possession within the stipulated period.

35. However 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. 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.

37. 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.
38. 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.

39. 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 against the amount paid at the prescribed rate of interest i.e., @ 11% 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 i.e., 26.12.2016 till the date of offer of possession i.e., 01.12.2019 plus two months i.e., 01.02.2020 or actual handing over of possession after obtaining occupation certificate whichever is earlier.

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

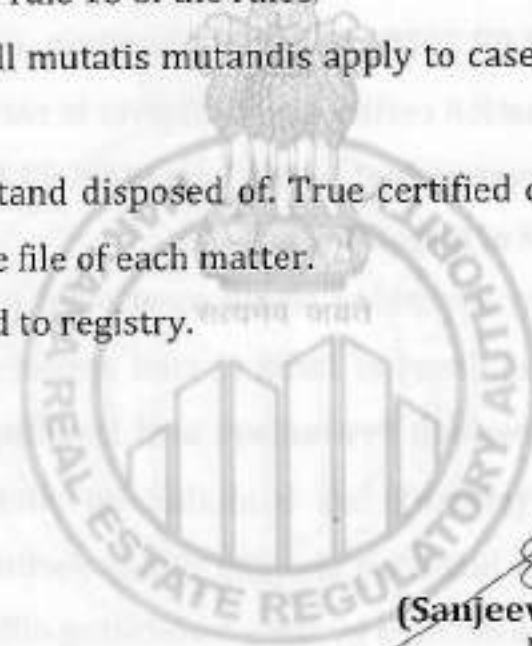
40. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)**, has held that an allottee is entitled to claim compensation & litigation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

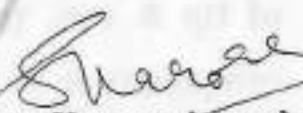
H. Directions of the authority

41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):



- I. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e. 11% p.a. for from the due date of possession i.e., 26.12.2016 till the date of offer of possession i.e., 01.12.2019 plus two months i.e., 01.02.2020 or actual handing over of possession after obtaining occupation certificate whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
44. Files be consigned to registry.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.08.2024