

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

Complaint no.	2593 of 2023
Date of filing	08.06.2023
Date of first hearing	27.09.2023
Order pronounced on	03.04.2024

1.Mr. Vinod Kaushik
2.Mrs. Swati

R/o: House no. 81/18, Friends Colony, Gurugram,
Haryana

Complainants

Versus

M/s Vipul Limited

Registered office: Regus Rectangle, Level 4,
Rectangle 1, D4, Commercial Complex, Saket, New
Delhi- 110017

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Rakesh Sharma (Advocate)

Complainants

Shri Rishabh Gupta (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.



A. Project and unit related details

2. 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:

Sr. No.	Heads	Information
1.	Name and location of the project	"Vipul Lavanya", Sector-81, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	26 of 2010 dated 18.03.2010 valid up to 17.03.2020
5.	Name of the Licensee	Graphic Research Consultant India and 4 others
6.	RERA registered/ not registered and validity status	Registered 15 of 2018 dated 11.09.2018 Valid upto 31.08.2019 Out of total area of 10.512 acres only 2.282 acres is registered
7.	Date of Allotment	24.09.2010 (Page 10 of complaint)
8.	Unit no.	1204, Tower - 03, 12 th floor (Page 18 of complaint)
9.	Unit area admeasuring	1780 sq. ft. (Super Area) (Page 18 of complaint)
10.	Date of execution of builder agreement	08.12.2012 (Page 17 of complaint)
11.	Basic sale price	Rs.45,65,700/- (BBA at page 19 of complaint)
12.	Total sale consideration	Rs.52,29,899/- (As per SOA dated 30.06.2021 annexed at page 28 of reply and page 50 of complaint)
13.	Total amount paid by the complainant	Rs.52,29,899/- (As per SOA dated 30.06.2021 annexed at page 28 of reply and page 50 of complaint)



14.	Possession clause	8.1(a) "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 provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the VENDOR, the VENDOR proposes to handover the possession of the Flat within a period of thirty-six (36) months from signing of the 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. " (BBA at page 24 of complaint)
15.	Due date of delivery of possession	08.03.2016 (Calculated from the date of execution of agreement plus grace period of 90 days)
16.	Permission to carry out Interior work/Fit out	30.06.2021 (Page 49 and 51 of complaint)
17.	Maintenance and Service Agreement	30.06.2021 (Page 30 of reply)
18.	Possession Certificate	02.07.2021 (Page 52 of complaint)
16.	Occupation certificate	Applied on 03.04.2018 (As alleged by respondent at page 4 of reply)

B. Facts of the complaint

3. The complainants have made following submissions in the complaint:
 - i. That the complainants came to know about the project "Vipul Lavanya" at Sector-81, Gurugram, Haryana being developed by the respondent-builder and booked a unit in the said project.
 - ii. That the respondent allotted unit no. 1204, having super area 1780 sq. ft. in tower no. 3 to the complainants.



- iii. That the total sale consideration of the unit is Rs.54,59,615/- and builder buyer agreement in this respect was executed between the parties on 18.12.2010.
- iv. That the complainants had paid Rs.10,00,000/- by way of cheques and took home loan from LIC Housing for the rest of the amount. The bank has made the remaining full and final payment to the respondent. Therefore, the complainants have paid full and final sale consideration to the respondent and nothing remains unpaid. The complainants are paying EMI @ Rs.44,158/- per month to the bank.
- v. That as per clause 8.1(a) of the buyer's agreement, the unit was to be delivered by 36 months from the date of the agreement, however, even after a lapse of 13 years, the respondent has not handed over actual possession as well as occupation certificate of the unit to the complainants.
- vi. That in June 2021, the respondent gave permissive possession of the unit to the complainants without obtaining occupation certificate and without executing the conveyance deed. Further, the respondent is taking maintenance charges @ Rs.18,000/- quarterly from the complainants from June 2021.
- vii. That the respondent has neither obtained occupation certificate from the concerned authority nor executed the conveyance deed in favor of complainants. The actual possession of the unit had also not been handed over to the complainants despite their several requests.
- viii. That the complainants are not the legal owners of the said unit unless the occupation certificate is obtained by builder and conveyance deed is registered in favor of the complainants by the competent authorities. The occupation certificate proves that the building has been completed as per the sanctioned plan.



- ix. That the Hon'ble Court has also ruled that the developers cannot use the force majeure clause for lack of approvals, financial crisis and any insolvency proceedings further directing the builders to obtain the occupation certificate for the building or pay interest for delay to the allottees.
- x. That the conduct of the respondent is illegal and arbitrary and the respondent is guilty of deficiency in services and unfair and monopolistic trade practices. Further, the respondent is clearly in breach of contractual obligations owing to non-fulfilment of the terms and conditions of the buyer's agreement.

C. Relief sought by the complainants

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

- I. Direct the respondent to pay delay interest penalty.
 - II. Direct the respondent to handover actual physical possession of the unit in question and to obtain occupation certificate from the concerned competent authority and execute conveyance deed in favour of the complainants.
 - III. Direct the respondent not to charge any kind of maintenance charges from the complainants till actual possession is delivered post receipt of occupation certificate and conveyance deed is registered in favour of the complainants.
 - IV. Direct the respondent to pay litigation costs.
5. 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

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

- i. That the complainants have no locus standi to file the present complaint as they are already in possession of the unit since 2021. Also, the complaint is bad for non-joinder of necessary party as Mrs. Jyoti (joint-allottee) has



not been impleaded as party to the present case. Hence, the present complaint is liable to be dismissed.

- ii. That the complaint filed by the complainants is also barred by limitation as no step or grievance had been taken between the years 2013 till 2021. There is no documentary proof on record. Thus, the complaint is liable to be dismissed outrightly.
- iii. 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.
- iv. 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-81, Gurugram, Haryana. Pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the group housing project by the name of "Vipul Lavanya".
- v. 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.

- vi. 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 filing 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.
- vii. That the complainants have executed and acknowledged an undertaking at the time of handing over of the possession. Clause 21 of the undertaking is reiterated as follows:

"21. That I/we entering into the unit for carrying out interiors/external facilities with clear understanding that any additional demanded by the company shall be paid by me/us in accordance with the revised payment schedule agreed upon mutually between myself/ourselves and the company. The company shall in no manner be liable to pay any penalty or compensation to the I/we for the delay in handing over of the actual physical possession of the unit for any reason whatsoever."

Thus, the complainants have waived of their right to claim any delay possession charges from the respondent.

E. Jurisdiction of the authority

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



D.I Territorial jurisdiction

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

D.II Subject matter jurisdiction

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondent.

- F.I Objection raised by the respondent regarding the complaint being non-maintainable on ground of non-joinder of necessary party, i.e., Smt. Jyoti.**



11. The respondent submitted that the present complaint is bad for non-joinder of necessary party as Mrs. Jyoti, the joint allottee has not been impleaded as party to the present complaint.
12. Perusal of case file reveals that a builder buyer agreement dated 08.12.2012 had been executed between the complainants (Mr. Vinod Kaushik and Mrs. Swati) and the respondent. The performa-B dated 13.04.2023, annexed a page no. 1 of the complaint identifies the complainants as "Vinod Kaushik and others." Further, Form-CRA annexed at page no. 3 of the complaint includes name of both the complainants (Mr. Vinod Kaushik and Mrs. Swati). The aadhar card of both the complainants (Mr. Vinod Kaushik and Mrs. Swati) are also annexed at page no. 63 and 64 of the complaint. Even the vakalatnama annexed to the complaint at page no. 65 of the complaint bears the signatures of both the complainants (Mr. Vinod Kaushik and Mrs. Swati).
13. In view of the aforementioned reasons, the Authority considers the plea advanced by the respondent being devoid of merits primarily on the ground that there is no complainant in the name of Mrs. Jyoti. Further, the builder buyer agreement dated 08.12.2012 had been executed between the complainants (Mr. Vinod Kaushik and Mrs. Swati) and the respondent and both the complainants are already a party to the present complaint. Thus, the plea of the respondent stands redundant and therefore, not maintainable.

F.II Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.

14. The respondent further contends that the complaint is not maintainable as it is barred by limitation, citing that the complainants did not raise any grievance from 2013 to 2021. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same



view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others which provides as under:

*"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. **In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches.** Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."*

15. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay delay interest penalty.

G.II Direct the respondent to handover actual physical possession of the unit in question and to obtain occupation certificate from the concerned competent authority and execute conveyance deed in favour of the complainants.

16. The above mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

17. In the present complaint, the grievance of the complainants is that the respondent has failed to handover the physical possession and are seeking interest for delay in handing over possession. However, 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 proviso to Section 18(1) of the Act which 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."

18. 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

*(a) 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 provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the VENDOR, the VENDOR proposes to handover the possession of the Flat **within a period of thirty-six (36) months from signing of the 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.**"*

19. **Due date of handing over possession:** As per clause 8.1(a) of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 36 months from the date of signing of the agreement subject to further grace period of 90 days. Therefore, the due date of handing over possession comes out to be 08.03.2016.
20. **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, *ibid*. Rule 15 has been reproduced as under:

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

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

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

21. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. 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., 14.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
23. 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;"*

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent-promoter which is the same as is being granted to the complainants in case of delayed possession charges.
25. 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 08.03.2016. 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.
26. 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 the proceedings dated 01.05.2024, 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 permissive possession has been made to the complainant-allottees on 30.06.2021 for undertaking interior works. It is necessary to clarify whether offer of possession made to allottee tantamount to a valid offer of possession or not, because after a valid and lawful offer of possession is



being made by the promoter to the allottee, the liability of promoter for delayed possession charges comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over the valid possession. Thus, the authority is of considered view that a valid offer of possession must have following components:

- a. Possession must be offered after obtaining occupation certificate;*
- b. The subject unit should be in a habitable condition;*
- c. The possession should not be accompanied by unreasonable additional demands.*

27. In the present matter, the respondent has offered the possession (fit-outs) of the allotted unit on 30.06.2021 i.e., before obtaining occupation certificate from the concerned department. Therefore, no doubt that the offer of possession has been sent to the complainant but the same is for fit outs. Thus, the offer of possession is an invalid offer of possession as it triggers component (a) of the above-mentioned definition.
28. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of the occupation certificate. In the present complaint, the occupation certificate has not been obtained by the respondent till date. The respondent has handed over the actual physical possession to the allottees on 02.07.2021. The Authority further observes that the complainants were aware that the occupation certificate is not yet received by the respondent-promoter, yet they took the actual physical possession of the unit offered by the respondent. This implies that the complainants have been enjoying the vacant and peaceful possession of the unit since 02.07.2021.
29. 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., @11% p.a. w.e.f. due date of possession i.e., 08.03.2016 till the date of handing over of possession, i.e., till 02.07.2021, as per Sections 18(1) and 19(10) of the Act read with Rule 15 of the Rules, *ibid*.

Possession

30. 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 complainants-allottees are obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act. However, the possession had already been handed over to the complainants in the present case. Same is evident from possession certificate dated 02.07.2021 issued in favour of the complainants. Therefore, no direction to this effect is required.

Execution of conveyance deed

31. The respondent apprised the Authority during the course of proceedings dated 01.05.2024 that the allottee had already signed an undertaking wherein the complainants have undertaken not to seek for conveyance deed until the matter is decided by the Hon'ble High Court.
32. However, the Authority is of the view that while crafting such an unfair undertaking, the respondent has openly exploited its dominant position, effectively leaving the complainant-allottee with no choice but to sign and accept the document. This conduct by the respondent demonstrates its blatant disregard for the allottee's rights and its prioritization of its own unfair advantage over the allottee's lawful entitlements.
33. 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."

34. 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.
35. 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 dues and requisite stamp duty by the complainants as per norms of the state government in terms of Section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.
- F.III Direct the respondent not to charge any kind of maintenance charges from the complainants till actual possession is delivered post receipt of occupation certificate and conveyance deed is registered in favour of the complainants.**
36. This issue has already been dealt with by the Authority in complaint bearing no. 4031 of 2019 titled as "**Varun Gupta Vs. Emaar MGF Land Limited**" **decided on 12.08.2021**, wherein it was held that since maintenance charges are applicable from the time a flat is occupied, its



basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission.

37. Thus, the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand such maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

F.IV Direct the respondent to pay litigation costs.

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.

H. 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 at the prescribed rate of 11% p.a. for every month of delay w.e.f. due date of possession i.e., 08.03.2016 till the date of handing over of possession, i.e., till 02.07.2021, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
- II. The arrears of such interest accrued from 08.03.2016 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, *ibid*.
- 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 month 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., 11% 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. The complaint stands disposed of.
41. File be consigned to the registry.

Dated:14.08.2024

HARERA
GURUGRAM

Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram