

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

Complaint no. : 937 of 2022
Complaint Filed on : 01.02.2022
Order pronounced on: 25.07.2024

Bharat Bhushan Gupta

R/o: 258/36, Balram Nagar Behind Krishi Upaj Samiti, Sikar,
Rajasthan 332001

Presently at: Flat No. 473, Our Homes (Phase 2), Sector 37 C,
Gurugram

Complainant

Versus

M/S Assotech Moonshine Urban Developers Pvt. Ltd.

Regd. office: H-127, Sector 63, Gautam Budh Nagar, Noida,
Uttar Pradesh - 201301

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Pawan Kumar (Advocate)

Shri Sanjeev Kumar Sharma (Advocate)

**Complainant
Respondent**

ORDER

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

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Our Homes
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Low-Cost Group Housing Project
4.	HRERA registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019
	HRERA registration valid up to	01.12.2019
5.	Allotment letter dated	Not provided on record
6.	Date of apartment buyer agreement	13.03.2014 (As per page no. 12 of the complaint)
7.	Unit no.	773 on 4 th floor, tower- Tulip (As per page no. 16 of the complaint)
8.	Unit area admeasuring	48 sq. mtrs. (Carpet area) (As per page no. 16 of the complaint)
9.	Possession clause	3(a) Offer of possession <i>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</i>

		<p><i>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.</i></p>
10.	Date of commencement of construction of the project	CTE-02.12.2013 (As per page no. 52 of the reply)
11.	Due date of possession	02.06.2017 (Calculated from the date of the consent to establish i.e., 02.12.2013 + 6 months grace period) (Grace period of 6 months is allowed)
12.	Total sale consideration	Rs.16,00,000/- (As per page no. 16 of the complaint)
13.	Amount paid by the complainant	Rs.16,00,000/- (As per conveyance deed on page no. 23 of reply)
14.	Occupation certificate	24.02.2020 (As per page no. 108 of reply)
15.	Offer of possession	20.03.2020 (As per page no. 59 of the complaint)

16.	Possession certificate letter dated	07.08.2020 (As per page no. 58 of the complaint)
17.	Conveyance deed dated	08.12.2020 (As per page no. 24 of reply)

B. Facts of the complaint:

3. The complainant had provisionally booked an apartment bearing no. 473, 4th floor block/ tower tulip, Gadoli Khurd Sector 37C, Gurugram, area admeasuring 48 sq. yds and paid a sum of Rs. 16,00,000 to the respondent as full and final consideration and the respondent acknowledged the same vide builder buyer agreement dated 15.03.2014 and issued acknowledgement receipts of instalments as per plan.
4. The builder had promised to complete the construction within the prescribed period in builder buyer agreement i.e. within 3 years from the date of the agreement.
5. The allottee has timely paid whole of the consideration in instalments mentioned in the ABA. On every payment the representative assured the complainant/ allottee that the construction of the building is continuously going on and the possession to all the allottees would be given by April 2017.
6. After payment of sale consideration as per plan, the representatives of the builder stopped talking and giving any update satisfactorily on completion of the construction and handing over the possession on promised time i.e., by April 2017.
7. The allottee in the month of December 2015 visited the site and found that even the foundation of the project was not complete and no one was there to work. Thereafter the allottee visited the office of the builder and asked him

- about the present status of the project then he said that the work is in full swing and possession would be delivered timely.
8. Thereafter after some time in the month of March 2016 the complainant / allottee again visited the site of construction of the project and surprised to see that the construction of the foundation of the buildings was still in the same status as he had seen earlier. The allottee visited the office of the builder and asked him that why the work is still at the same status then builder again assured the allottee / complainant that you don't worry you will be offered the possession even before the time then again having no other option except waiting till the time of possession was to be offered.
9. Thereafter in the month of February 2017, the allottee again visited the site of construction of the project and found that only first floor was being constructed and rest of the proposed building was not completed. The allottee again visited the office of the builder but found that the behaviour of the staff of the builder was very harsh and they threatened the allottee and said that if you want your apartment wait till completion and it will be completed till next year. But the allottee said that I have paid about full of your consideration in 2015 as per plan and in hope that I will shift in my house and will get rid of paying rent was waiting. But the builder did not answer satisfactorily. Thereafter the allottee/ complainant continuously kept visiting the site of project but the building was incomplete and answer to this regard was never given satisfactorily by the builder. Then on various visits by all the allottees with the complainant talked to the builder then he replied that he will compensate all the allottees for delay.
10. Thereafter, offer of possession was made by builder on 20.03.2020 of an incomplete project where only the structure of the building could be seen but no other amenities required for completion of the project and ready for

possession was provided. The allottee visited the builder again then he said requested for taking possession but the allottee said how can I live in only four walls where there is no water, no electricity and even main pipeline for sewerage is missing then he asked for some more time to make the apartment able to live in. Many amenities necessary for completion was still pending like electricity, sewerage etc. builder failed to show completion certificate and other mandatory certificate for finalisation of any building. Although the apartment was still incomplete but on the assurance of the builder that he will provide all the amenities very soon and will also compensate for the delay as per ABA, the allottee shifted in the apartment.

11. The certificate of possession was issued by builder to the allottee on 07.08.2020.
12. Thereafter, the allottee visited the office of the builder for completion of pending work and for compensation for delay as per builders promise but the builder refused to pay the compensation and for completion of the pending work.
13. E-mail conversation for the demand of compensation whereby the respondent / builder was requested to pay the due amount of compensation.
14. The respondent has legal liability towards allottee to pay a sum of 16,64,000/- first sixty days from October 2017 and November 2017 @ 18% and from December 2017 to January 2022 @ 24% compensation and till the decision of this case with interest @ 24 % per annum Clause 7 (ii)(a) of the ABA.
15. Subsequently, the allottee had been requesting respondent since the execution of the conveyance deed to clear dues towards the allottee but the respondent did not pay any just and genuine demand of the allottee and failed to give any clarification till date. Hence this complaint.

16. The allottee has sent various reminders to the respondent via phone calls and personal visits to the office of the respondent / builder but respondent has neither paid any heed to his demand and nor ready to compensate till date.

17. The respondent is bound and the complainant is entitled to compensate and also entitled to interest on the paid amount from the respondent.

C. Relief sought by the complainant:

18. The complainant has sought the following relief(s):

- i. Direct the respondent to pay interest on Rs. 16,64,000/- @ 24% per annum on the amount.
- ii. Direct the respondent to pay cost of litigation of Rs. 1,00,000/- to the complainant.

19. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

20. The respondent is developing a low cost/ affordable housing colony by the name of "Our Homes" on an area admeasuring 10.144 acres falling in the revenue estate of village Gadoli Khurd, Sector 37-C. The complainant approached the respondent and applied for allotment of an apartment which was duly accepted by the respondent. Consequently, the complainant was allotted apartment bearing no. 473, 4th Floor, Tower Tulip in the project for a total basic sale consideration for Rs. 16,00,000/-. Furthermore, the parties jointly executed an Apartment Buyer's Agreement on 13.03.2014 with respect to the unit and which encapsulated the agreed terms between the parties.

21. Admittedly, the possession of the said flat has already been offered to the

complainant on 20.03.2020. Further, admittedly, the complainant has taken over physical possession of the unit as well as executed a registered conveyance deed dated 08.12.2020 with respect to the said unit and thus, the complainant is now the legal owner of the unit. It is submitted that by virtue of clauses 6.2 and 7.1 of the conveyance deed, the complainant is deemed to have waived all probable objections and claims whatsoever, against the respondent, in relation to the unit.

22. Regardless, of the above, the complainant has filed the present complaint claiming compensation/interest for alleged delay in handing over possession amounting to Rs. 16,64,000/- along with interest @ 24% p.a. on such amount along with litigation costs of Rs. 1,00,000/-. It is pertinent here to mention here that there was no delay in offering possession, and delay, if any, was due to force majeure reasons beyond the control of the respondent. Thus, the complaint is not made out and deserves to be rejected at the outset.
23. The respondent submits that the delay caused, if any, was due to force majeure reasons and was hence not to be counted under the aba and no interest for delay can be levied during this period. the force majeure reasons are as below:
- The delay, if any, in delivery of possession was primarily caused due to inordinate and excessive delay by the Department of Town and Country Planning, Government of Haryana in renewal of respondent's license under the Haryana Development and Regulation of Urban Areas Act, 1975. The respondent had applied and was granted License No. 13 of 2012 dated 24.02.2012 by the DTCP, which was valid till 21.02.2016 and the respondent was forced to apply for renewal, even though at least 10 months (till December, 2016) were remaining for completing construction. Moreover, in the meanwhile the DTCP itself vide notification dated 30.05.2014, had

extended time for completion of construction from 3 years to 4 years. The respondent's application for renewal on 11.02.2016, the DTCP took an excessive and unreasonable period of 37 months to extend the respondent's license and renewed it only on 26.04.2019.

- The project was also delayed due to other force majeure reasons such as the ban on construction activity imposed by the NGT and other pollution control authorities from time to time during the period starting from the November, 2017 till November, 2019. It is submitted that during the said period, construction activity in Gurugram was suspended for a period of 44 days, which delay is absolutely beyond the control of the respondent.
- The one of the major delay caused due to the sanction of building plans under the Haryana Building Code and Consent to Establish by the Haryana State Pollution Control Board, Panchkula was granted only on 07.05.2013 and 02.12.2013 respectively. Thus, as also admitted by the complainant, the time for delivery shall start being reckoned from 02.12.2013 only. As per the terms of the ABA and the Affordable Housing Policy of 2009, the respondent had a period of 3 years to complete construction. In other words, the respondent had 3 years from 02.12.2013, i.e., till 02.12.2016. Thus, in February, 2016, when the license "expired", the respondent was forced to apply for renewal even though 10 months (till December, 2016) were remaining for completing construction.
- The construction remained suspended till 17.11.2018 i.e. for a total of 8 days. In the year 2018, by the orders of the Haryana State Pollution Control Board dated 14.06.2018. and 24.12.2018, construction in Gurgaon remained suspended for a period of 2 days each. In the same year, the Environment Pollution (Prevention and Control) Authority banned construction in the

region for a period of 12 days.

- Furthermore, in the year 2019, Environment Pollution (Prevention and Control) Authority vide its order dated 01.11.2019, 04.11.2019, 11.11.2019 and 13.11.2019 restricted construction activities in Gurugram for a period of 15 days starting from 01.11.2019 till 15.11.2019. Consequently, the State Disaster Management Authority, Haryana also restricted construction activities in the area for a period of 3 days vide its order dated 14.11.2021. It is submitted that the said delay of 44 days is entirely beyond the control of the appellant and hence merits exclusion from the consideration of "delay" in delivering possession, as per Clause 3(b)(i) of the agreement signed between the parties.
24. Without prejudice to the above arguments, it is reiterated that the present complaint deserves to be dismissed at the outset as the complainant has not approached this Hon'ble Authority with clean hands. It is submitted that in terms of clause 6.2 and 7.1 of the conveyance deed, taking over physical possession of unit and execution of the conveyance deed, amounts to a deemed waiver of any claims whatsoever which the complainant may have against the respondent in relation to the unit.
25. It is submitted, without prejudice to the arguments taken above, that there was no delay in handing over possession whatsoever. It may be noted that as on 21.02.2016, the date when the "expiry" of the license occurred, the respondent admittedly had 1 year and 10 months remaining for completion of the project, which it was deprived of.
26. By virtue of notification dated 30.05.2014 bearing No. PF-70/11350, the DTCP granted all affordable housing projects (such as the present project) a period of 4 years for completion starting from the date of approval of the building plans or grant of environmental clearance whichever is later.

Furthermore, Clause 3 of the ABA notes that the period of 36+6 months is subject to any Act, notice, order, rule or notification of the Government, which includes the said notification of 2014 granting 4 years' time. Therefore, the period for completion of the project stood extended by a period of 1 year. It is reiterated that the proposed period of delivery of possession was extendable under Clause 3 of the ABA in circumstances beyond the control of the respondent as in the present case.

27. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

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

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

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

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responsible to the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent:

F.I Objection on account of execution of conveyance deed.

32. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainant is estopped from claiming any interest in the facts and circumstances of the case.

33. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in

writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

34. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the statutory liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
35. The authority has already taken a view in in ***Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others*** has observed as under:

47.the authority observes that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

Therefore, execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory

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right to seek delayed possession charges as per the provisions of the said Act.

36. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

F.II Objections regarding Force Majeure.

37. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as delay in renewal of license by DTCP, various orders passed by Environmental Pollution Prevention & Control Authority, NGT, and orders of other courts/authorities to curb the pollution in NCR, etc. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 3(a) of ABA dated 13.03.2014, the due date of handing over of possession was provided as 02.06.2017. Grace period of 6 months is allowed being unconditional.

38. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 02.06.2015. Further, the time taken in governmental bans/guidelines cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and are for very shorter period of time. The promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to pay interest on Rs 16,64,000/- @ 24% per annum on the amount.

39. The complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

Section 18: - Return of amount and compensation

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

40. Clause 3(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*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.***

41. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The

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drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

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

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

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

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

43. 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.

44. 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., 25.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
45. 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(a) of the ABA dated 13.03.2014, the due date comes out as 02.06.2017 (including a grace period of 6 months, which is allowed unconditionally). The occupation certificate of the project was obtained dated 24.02.2020, subsequent to which the offer of possession was offered by the respondent on 20.03.2020. Copies of the same have been placed on record.
46. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the terms and conditions of the agreement dated 13.03.2014 to hand over the physical possession within the stipulated period.
47. 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 24.02.2020. The respondent offered the possession of the unit in question to the complainant only on 20.03.2020. 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. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 02.06.2017 (calculated from the date of consent to establish) till the date of offer of possession (20.03.2020) plus two months i.e., 20.05.2020.

48. 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 are entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. 02.06.2017 till the date of offer of possession (20.03.2020) plus two months i.e., 20.05.2020; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to pay sum of Rs. 1,00,000/- to the complainant towards the cost of the litigation.

49. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357*), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 of the Act, the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in

section 72 of the Act. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions issued by the Authority:

50. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e. 11% p.a. for every month of a delay from the due date of possession i.e., 02.06.2017 till the date of offer of possession plus two months i.e., upto 20.05.2020, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

51. Complaint stands disposed of.

52. File be consigned to the Registry.

Dated: 25.07.2024

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