



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of decision:	22.07.2024
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Name of Builder	HL Residency Pvt. Ltd.
Name & Location of Project	"HL CITY", Sector-37, Bahadurgarh

Sr. No.	Complaint No(s).	Complainants
1.	1 of 2023	<p>Mrs. Seema w/o Sh. Sonu Kumar R/o House No. 502/20, Ashok Nagar, Bahadurgarh, Haryana-124507</p> <p>.....Complainant</p> <p>Versus</p> <p>M/s HL Residency Pvt. Ltd. (through its Managing Directors/ Partners/ Authorised Representatives)</p> <p>Registered office- at B-12, Vishrantika Apartment, Plot No. 5A, Sector-3, Dwarka, Delhi-110075.</p> <p>.....Respondent</p>

2.	2985 of 2022	<p>Mrs. Neelam w/o Sh. Sehdev Balhara R/o House No. 535, Village & P.O Kheri Jasaur, Bahadurgarh, Haryana-124505Complainant</p> <p style="text-align: center;">Versus</p> <p>M/s HL Residency Pvt. Ltd. (through its Managing Directors/ Partners/ Authorised Representatives) Registered office- at B-12, Vishrantika Apartment, Plot No. 5A, Sector-3, Dwarka, Delhi-110075.Respondent</p>
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CORAM: Nadim Akhtar**Member****Chander Shekhar****Member**

Present:- Adv. Naveen Single, Counsel for the complainants through VC (in both complaints)

Adv. Gaurav GS Chauhan, Counsel for the respondent through VC (in both complaints)

ORDER (NADIM AKHTAR - MEMBER)

1. This order shall dispose of above captioned two complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations,



responsibilities and functions towards the allottee as per the terms agreed between them.

2. These two complaints are taken up together as facts and grievances of the complaints more or less are identical and relate to the same project of the respondent, i.e., “HL CITY”, Sector-37, Bahadurgarh”. The fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoter to deliver timely possession of unit in question. Complaint no. 1 of 2023 titled “Seema versus HL Residency Pvt. Ltd.” has been taken as lead case for disposal of these two matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project have been detailed in the following table:

SR. No.	Particulars	Details
1.	Name and location of project	“HL CITY”, Sector-37, Bahadurgarh
2.	Nature of the Project	3BHK, Affordable Residential Floor-Pearl Floor
3.	Name of the Promoter	HL Residency Pvt. Ltd.
4.	RERA registered/not registered	Registered bearing Registration No.-HRERA-PKL-JJR-88-2019

4. Further the details of sale consideration, the amount paid by the complainants and proposed date of handing over of the possession have been given in following table:

Sr. No	COMPLAINT NO.	Apartment No. and area	DATE OF AGREEMENT	DEEMED DATE OF POSSESSION	TOTAL SALES CONSIDERATION	TOTAL AMOUNT PAID BY THE COMPLAINANTS AS PER RECEIPTS
1.	1 of 2023	Apartment No. UG-97 Super area- 1471.25 sq. ft.	Allotment Letter- 02.07.2018 Agreement for sale/ Promoter Buyer's Agreement- 03.08.2018	03.08.2020 (24 months from the date of execution of the said agreement i.e, 03.08.2018)	₹34,47,920/- (mentioned in pleadings of the complainant)	₹34,52,564/-
2.	2985 of 2022	Apartment No. SF-119 Super area- 1471.25 sq. ft.	Allotment Letter- 21.08.2018 Agreement for sale/ Promoter Buyer's Agreement- 01.11.2018	01.11.2020 (24 months from the date of execution of the said agreement i.e, 01.11.2018)	₹37,58,496/- (mentioned in pleadings of the complainant)	₹37,59,152/-

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

5. That the present complaint has been filed by Mr. Sonu Kumar, S/o Shri Ram Swaroop who has been duly authorized by the Appellant to file the present complaint. Copy of the Authority Letter is enclosed with the complaint.



6. That the complainant booked a unit admeasuring super area 1471.25 sq. Ft. in the project of respondent namely "HT City Project at Sector-37, Bahadurgarh, District Jhajjar, Haryana. The complainant was issued allotment letter dated 02.07.2018 whereby she was allotted an apartment No. UG-97 on Pearl Floor (Upper Ground Floor) ad-measuring Carpet area 702.20 sq. Ft. on payment of Rs.3,00,000/- as booking amount vide Cheque No. 250565 dated 30.06.2018 whose receipt was issued on 04.07.2018. Copies of all the receipts of payment are annexed as Annexure P-1(Colly). A copy of allotment letter is annexed as Annexure P-2.
7. That the complainant entered into the Buyer's Agreement on 03.08.2018 with the respondent wherein complainant has been allotted Apartment No. UG-97 on Pearl Floor (Upper Ground Floor) for a total sale consideration of ₹34,47,920/-(as mentioned in pleadings of complainant in his complaint book). A copy of the Buyer's Agreement is annexed as Annexure P-3. That the complainant has paid ₹34,52,564/- against the total sale consideration. As per clause 8.1 of the agreement the respondent was under an obligation to deliver possession of the unit within 24 months from the date of the agreement, which comes out to be 03.08.2020.
8. That the complainant availed housing loan of ₹26,20,377/- from AXIS Bank @8.40% approx. under fixed rate of interest for purchase of unit bearing No.



UG-97 on Pearl Floor (Upper Ground Floor) from the respondent in his project. Tripartite Agreement was also executed between the Complainant, Respondent and AXIS Bank on 14.03.2019. A copy of Tripartite Agreement is annexed as "Annexure P-4".

9. That the complainant filed a complaint in respect of construction of additional floor without taking written consent of 2/3rd allottees & regarding installation of transformer in the green belt at RERA Panchkula Authority vide Complaint. No. RERA-PKL-161-2020 which was dismissed by the Authority vide order dated 03.11.2020. In the said order, respondent gave written submission before the Authority that the respondent would deliver the physical possession of flat to the complainant on 07.12.2020. A copy of HRERA Panchkula Authority order is annexed as Annexure P-5.
10. That till date the complainant has paid ₹34,52,564/- as per the demands raised by the respondent without any delay even when the said complaint against the respondent was pending before the Hon'ble RERA Panchkula Authority, but the respondent asked the complainant to sign the Copy of Undertaking by way of an affidavit to give consent for not making any future complaint/appeal in respect of construction of additional floor or regarding installation of transformer in the green belt. The respondent has even stopped supplying the payment receipts to the complainant. The copies of the demand letters are



annexed as Annexure P-6 (Colly). The copy of the said Undertaking by way of affidavit is annexed as "Annexure P-7".

11. That the complainant made multiple requests to the respondent to handover the possession of flat through email communication dated 09.07.2021 as well as personal visits to the respondent's office but the respondent always denied the possession of the unit because the complainant refused to sign on the copy of undertaking by way of an affidavit to give consent for not making any future complaint/appeal in respect of construction of additional floor or regarding installation of transformer in the green belt. The copy of said email communication is annexed as Annexure P-8.
12. That Clause 14.1 of the Apartment Buyer's Agreement, inter alia, stipulates that the respondent in its absolute discretion may condone the delay in any payments due, by charging interest on delayed payments @ 21% p.a. which shall be calculated from the due date of outstanding amount till the time of actual payment. In case of delayed offer of possession, the same rates of penalty will also be applicable on the respondent.
13. That the respondent has failed to deliver the possession of flat and is misusing unilateral terms to sign the copy of undertaking by way of an affidavit to give consent for not making future complaint/ appeal in respect of construction of additional floor or regarding installation of transformer in the green belt



which is not written in the Buyer's Agreement and is harassing the complainant. It is stated that Clause 14.1 of the agreement stipulates for a penal interest @21% p.a. on delayed payments which shall be calculated from the due date of outstanding amount till the time of actual payment, and therefore, in terms of RERA Act, 2016, the complainant is entitled to same rate of interest for delay period in handing over of the physical possession of the unit.

14. That further, as per the definition of "interest" provided under sub-section (za) of Section 2 of the Real Estate (Regulation and Development) Act, 2016, the rate of interest chargeable by the promoter in case of default should be equivalent to the rate of interest payable by the promoter/colonizer in case it is in default.
15. Therefore, the statutory provision as mentioned here in above should be read into the Buyer's Agreement and the respondent should be held liable to pay compound interest @21% from the due date of delivery of possession till actual handing over of physical possession. The interest is payable on the instalments/ sale consideration from the date of receipt of the respective instalments by the respondent. That a "Statement of Account" dated 16.11.2022 was issued by AXIS Bank in favour of the complainant which shows that the loan sanctioned to the complainant is yet to be repaid by the



complainant and the AXIS Bank has not released the said flat from their mortgage. True copy of the statement of account of said loan is attached as Annexure P-9.

16. Complainant has paid huge interest on the said loan amount taken by her to purchase the allotted apartment and is facing huge financial burden. The cause of action to file the complaint is continuing, in as much as despite receipt of almost entire sale consideration and lapse of almost 4 years & 6 months from the date of booking and 2 years and 6 months from the due date of handing over of possession, the respondent has failed to deliver possession of the said unit. Therefore, the complainant is entitled to invoke Section 18 of RERA and interest for delayed possession. Therefore, complainant is entitled to compound interest @ 21% from the due date of delivery of possession till actual handing over of physical possession.

C. RELIEFS SOUGHT

17. In view of the facts mentioned in complaint book, the complainant prays for following:
- i. To direct the respondent to deliver the possession of flat with immediate effect without signing the Undertaking by way of affidavit to give consent for not making future complaint/



appeal in respect of construction of additional floor or regarding installation of transformer in the green belt.

- ii. To compensate the Complainant for the delay in delivery of the possession of flat and to pay compound interest @ 21% from the due date of delivery of possession till actual handing over of physical possession;
- iii. To compensate the Complainant for the interest paid @ 8.40% p.a. by her on the loan availed for the purchase of the said allottee apartment;
- iv. To pay compensation of Rs.5,00,000/- on account of harassment, mental agony and undue hardship caused to the Complainant on account of deficiency in service and unfair trade practices;
- v. The Complaint may be allowed with costs and litigation expenses of Rs.2,50,000/-;
- vi. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

18. The respondent submits that the Complainant is a habitual litigant and prior to filing the present complaint, she had earlier filed Complaint No. 161 of 2020; Seema versus. M/s HL Residency Pvt. Ltd, praying for the following reliefs:-

"a. Timely construction of her apartment as per terms mentioned in her

Allotment letter cum Buyer Agreement, lay out plans;

b.To stop illegal construction of 3a floor in her building; and To remove transformer installed near her apartment and restore the open/green area."

19. The afore-mentioned complaint was disposed of as dismissed by the Ld. Authority vide order dated 03.11.2020 as being pre-mature, as the respondent still had time to deliver the possession in terms of the Allotment Letter. The afore-mentioned order passed by the Ld. Authority was challenged by the complainant by way of appeal before the Hon'ble Appellate Tribunal and the Hon'ble Appellate Tribunal vide its order dated 07.04.2022 remanded back the complaint of the complainant to the Authority for adjudication just upon the following two issues:-

"Necessary direction to the respondent to stop illegal construction of third floor in building; and necessary direction to the respondent to remove transformer installed near building and to restore green area."



20. In pursuance to the directions issued by the Hon'ble Appellate Tribunal, the Ld. Authority, once again, re-opened the afore-mentioned complaint of the complainant and vide order dated 21.09.2022 while deciding both the issues against the complainant, dismissed the said complaint. Copies of the orders dated 03.11.2020 & 21.09.2022 are annexed as Annexure R-1 and Annexure R-2.
21. That the complainant has chosen to remain silent about the fact of filing an appeal against the said order before the Hon'ble Appellate Tribunal and, further, the Hon'ble Appellate Tribunal remanding back the said complaint on 2 issues mentioned in the preceding para and, thereafter, the Ld. Authority again dismissing the said complaint vide order dated 21.09.2022. Further, though the issue qua the installation of transformer was settled and closed by the Ld. Authority in favor of the respondent vide its order dated 21.09.2022.
22. That Occupation Certificate for the unit in question was received on 19.10.2020. Thereafter, offer of possession was raised to complainant. However, irrespective of that the complainant did not take possession of her unit, thereby violating the mandate of Section 19 (10) of the Real Estate (Regulation & Development) Act, 2016. Copy of the OC dated 19.10.2020 is annexed as Annexure R/3.



23. That the prayer of complainant for compensation cannot be adjudicated in case the complainant is not seeking refund and do not wish to withdraw from the project. That once the Complainant has exercised her right to file complaint seeking possession, along with interest on the payment made, alleging delay in delivering the possession, she no longer stands entitled to seek compensation under the 2016 Act. Under the 2016 Act, the allottee can seek compensation only if he or she wishes to withdraw from the project, thereby seeking refund of the deposited amount along with interest and compensation.
24. That the Buyer's Agreement dated 02.07.2018 was entered into between the parties, as such, the parties are bound by the terms and conditions mentioned in the said agreement. There is no power or jurisdiction under the Act to direct modification of any Article of the agreement. An Article of the agreement which is agreed to and binding between the parties has to be implemented in terms thereof and no direction can be given to implement the same contrary to the terms and scope thereof.
25. Further, the respondent has not stopped from supplying the payments receipts as alleged. Copies of the receipts supplied to the complainant are annexed as Annexure R/4 Colly. Respondent had also sent a letter for delivery of possession of Unit No. UG-97 to the complainant, but the complainant has



failed to complete paper formalities and execute the maintenance agreement etc. Even the complainant has not deposited the amount for stamp duty, registration & drafting charges, advocate and miscellaneous fee. The respondent is still ready to deliver the possession of unit no. UG-97 to the complainant, if she completes necessary formalities.

26. Respondent has successfully completed the construction of unit and has obtained occupancy certificate prior to the due date of completion of said period, but complainant even after due intimation has failed to complete paper formalities and also failed to get the conveyance deed executed in her favour and have also failed to take possession after getting the conveyance deed registered.
27. That the complainant has misinterpreted Clause 14.1 of the Buyer's Agreement in her favour, as there is no delay on the part of respondent. Respondent has successfully completed the construction of unit and has obtained occupancy certificate prior to due date of completion of said period, but complainant even after due intimation has failed to complete paper formalities and also failed to get the conveyance deed executed in her favour and have also failed to take possession after getting the conveyance deed registered.



28. That complaint filed by the complainant is an abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

29. Learned counsel for complainants reiterated the basic facts of the case and stated that possession has been taken by the complainants on 16.03.2024 in Complaint No. 1 of 2023 and on 18.03.2024 in Complaint no. 2985 of 2022. However, perusal of file revealed that possession letters have not been placed on record by the complainants. Further, he stated that complainant in Complaint no. 1 of 2023 is facing problem of seepage in the bathroom of their booked unit. For the same, complainants sent a letter to the respondent for rectification of the same. However, despite solving the same, complainant sent a "consent cum undertaking" dated 02.02.2024, wherein it is stated that *"in reference to the above, we wish to intimate that seepage arose due to leakage from upper floor and not due to fault of company, we want to further intimate that, if paint or whitewash at this moment, in that case, whitewash will be removed itself. And seepage will take time to become dry. In this situation we hereby assure and undertakes that as and when area under seepage that as and when area under seepage becomes dry we will paint again and white wash over the affected area at our cost."* Ld. counsel for



complainants stated that since complainants have now taken possession of the unit, respondent is trying to avoid his obligation towards the complainant.

30. Further, ld. counsel for complainants stated that it is recorded by the Authority vide hearing dated 15.01.2024 that "*during complainant's visit at the site for inspection, respondent asked complainants to deposit further payment of ₹45,000/- each to respondent at the time of taking over of possession. Therefore, 2 cheques each amounting to ₹45,000/- were given to respondent by the complainants. Out of which, one cheque issued by the complainant namely, Neelam is cleared.*" Therefore, only one cheque of ₹45000/- has been left to be paid on part of complainant namely Seema that was to be given at the time of offer of possession.
31. On the other hand, when case was called none appeared on behalf of respondent. However, later, Adv. Gaurav GS Chauhan appeared and requested the Authority to mark his presence. His request is accepted. He further submitted that possession has been delivered to the complainants.

F. ISSUE FOR ADJUDICATION

32. Whether the complainant is entitled for interest accrued on account of delay in handing over of possession in terms of Section 18 of Act of 2016?



G. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by learned counsel for complainant and the respondent, the Authority observes as follows:

33. Complainant in this case has booked an apartment bearing no. UG-97, having carpet area 702.20 sq. Ft. and super area- 1471.25 sq. Ft. on "Pearl Floor", Type- 3BHK Affordable Residential floor, for total sale consideration of ₹34,47,920/- through an allotment letter dated 02.07.2018 in the project of respondent namely; "HL City in Sector 37, Bahadurgarh, Haryana. Complainant has already paid an amount of ₹34,52,564/- out of the total sale consideration to the respondent. Buyer's Agreement has been executed between the parties on 03.08.2018.
34. As per clause 8.1 of the agreement "*The promoter will provide offer of possession to the allottee within 24 months from the date of execution of this agreement for sale/Promoter Buyer's Agreement.*" Therefore, deemed date of possession in captioned complainant is ascertained as 03.08.2020, i.e, 24 months from the date of execution of agreement (03.08.2018).
35. Perusal of file reveals that complainant earlier also filed a complaint bearing no. 161 of 2020 titled as "Seema vs. M/s HL Residency Pvt. Ltd. before the Hon'ble Authority for seeking relief as under:



- a. *Timely construction of her apartment as per terms and consitions mentioned in her allotment letter cum buyer agreement, lay out plans;*
- b. *To stop illegal construction of 3rd floor in her building; and*
- c. *To remove transformer installed near her apartment and restore the open/green area”*

Complaint no. 161 of 2020 was dismissed with all other bunch complaints by the Authority on 03.11.2020 on the ground that *“In view of statement given by the respondent, the Authority observes that project is complete and respondent had already applied for the grant of Occupation Certificate. Further the respondent was under an obligation to handover the possession of the apartment latest by 07.12.2020. Said date for delivery of possession has not yet arrived, therefore, all captioned complaints are premature at this stage and liable to be dismissed. Therefore, all captioned complaints are disposed of as dismissed with a liberty to file fresh complaint as on when a cause of action arises”*. In consonance to the same, complainant challenged the said order by way of an appeal before the Hon’ble Appellate Tribunal and Hon’ble Appellate Tribunal vide order dated 07.04.2022 remanded back the complainant to the Hon’ble Authority for adjudication of two issues. Same are as follows:

- i. *Necessary direction to the respondent to stop illegal construction of third floor in building; and*
- ii. *Necessary direction to the respondent to remove transformer installed near building to restore green area”*



36. Accordingly, Complaint no. 161 of 2020 was reopened by the Authority and Authority vide its order dated 21.09.2022 passed following directions:-

“After going through entire records especially the documents placed on record by the respondent under his affidavit dated 08.09.2022, Authority observes that captioned complaints were remanded back by the Hon’ble Appellate Tribunal for adjudication of the issues that respondent promoter had illegally constructed fourth floor in violation of section 14 of RERA Act.

4. Today learned counsel for the respondent has placed on record relevant documents mentioning that consent of 2/3rd allottees were already taken by the respondent before undertaking construction work of fourth floor in the building.

After perusal of the said documents Authority is of the considered view that respondent has followed all procedures as prescribed under the statues of RERA and Town and country planning as well, while seeking prior approval of the building plans from the competent Authority. The requirement under section 14 of the RERA Act 2016 has already been fulfilled by the respondent-promoter as construction raised on fourth floor by the respondent promoter is in accordance with the approved revised building plans issued by the concerned department in the year 2020 that too after getting consent of 2/3rd allottees, proof of the same has been annexed C at page no. 38-89 of documents. Hence in the light of above observations and documents placed on record by the respondent dated 20.06.2022. Authority concludes that respondent has raised legal construction of fourth floor well within their rights after adopting due course of law.

5. last, contention of learned counsel for complainant is that a transformer has been installed near this building, which makes the building unsafe to reside. On this issue, learned counsel or the respondent argued that transformer was installed strictly as per the provision of layout plan of the colony. To support his contention, he referred to Annexure G at page no. 39-8 of the said document. After perusing of said documents, Authority is of the view that transformer installed in colony is strictly as per provisions of



the layout plans. Therefore, second issue raised by the complainant has no merit in it.

5. in light of forgoing discussion, Authority is of the view that present complaints have no merit to intervene since respondent has proven hat no violation of law has been committed by him while constructing 4th floor and grievances raised by the complainants are baseless and hold o merit in it.

6. Disposed of. Files be consigned to record room after uploading of this order on the website of the Authority.

37. Authority observes that two issues raised by the complainant in her previous Complaint no. 161 of 2020 has already been adjudicated by the Authority vide order dated 21.09.2022. However, in present complaint, complainant is seeking main relief of possession along with delayed interest.
38. Firstly, with regard to the relief of possession, ld. counsel for complainant has submitted before the Authority today in the course of hearing that complainants in the captioned complaints have already taken possession of the booked apartment on 16.03.2024 in complaint no. 1 of 2023 and on 18.03.2024 in complaint no. 2985 of 2022. However, the complainants have not placed any documentary evidence on record to substantiate the claim of having taken possession by the respondent. This includes documents such as the possession letter or any acknowledgment from the respondent. Authority deems appropriate to take the submission of the ld. counsel for complainants on record and acknowledges it accordingly. The submission by the complainant's counsel is hereby considered effective in this context.



Therefore, it is considered by the Authority that the first relief sought by the complainant, i.e., possession of the apartment, has already been fulfilled/concluded.

39. Now, the issue which is left to be adjudicated by the Authority is whether complainant is entitled for interest accrued on account of delay in handing over of possession?
40. With regard to the same, careful perusal of the order dated 03.11.2020 passed by the Authority in earlier Complaint no. 161 of 2020, regarding verbal submission of respondent that *"Today, respondent counsel verbally submitted in the court that project is complete in all respects and they have also applied for the grant of Occupation Certificate vide application dated 08.10.2020 and the same is granted to respondent on 19.10.2020."* Therefore, it is very clear that project in question was completed in all respects way back in the year 2020. Further, respondent has already obtained occupation certificate for the project in question on 19.10.2020, meaning thereby, any offer of possession after the grant of occupation certificate would be considered legally offer of possession. However, careful perusal of order dated 03.11.2020 reveals that the respondent did not offer possession to the complainant at that time. Even when Complaint No. 161 of 2020 was remanded back to the Authority, and an



order was passed on 21.09.2022, the respondent had still not made offer of possession to the complainant.

41. The first instance where the respondent acknowledged offering possession was during the hearing on 15.11.2023 in the captioned complaints, where the respondent's counsel stated that, "*ld. counsel for respondent replied that possession was offered to the complainant on 19.10.2020.*" Following this, the Authority directed the respondent to provide documentary evidence of the offer of possession made to the complainant after the grant of the Occupation Certificate. In response, the respondent submitted an application dated 18.12.2023, claiming that physical possession of the booked units was offered to the complainant via emails dated 25.11.2023. However, the Authority observed that the respondent failed to provide any documentary evidence to substantiate the claim that an email was sent to the complainant on 25.11.2023, offering possession. Mere assertions without supporting documents are insufficient to be relied upon. Therefore, the respondent's submission that a valid offer of possession was made on 25.11.2023 holds no validity.
42. Subsequently, on 05.02.2024, the respondent filed another application, stating that a fresh letter of possession was sent to the complainant on 19.01.2024, and a copy of this possession letter was emailed to the RERA Authority on



the same date. The possession letter was attached as Annexure A-1 to the said application. Authority is of the view that the respondent made a legally valid offer of possession to the complainant on 19.01.2024. Therefore, the Authority deems it appropriate to recognize and acknowledge the valid offer of possession as having been made on **19.01.2024**. However, On perusal of application dated 05.02.2024, it is observed by the Authority that respondent has only attached a letter dated 19.01.2024, wherein it is clear that respondent has only attached a letter of offer of possession of the unit and has not actually hand over of possession to the complainant

43. Further, it is well settled by Hon'ble Supreme Court in **M/s. Fortune Infrastructure v. Trevor D'Lima (2018)** – wherein it is held that *"If a buyer has taken possession of the property, it does not necessarily negate their right to seek compensation for delays or defects in the property. The court emphasized that possession and compensation for delays are separate issues, and the latter can still be pursued even after taking possession."*
44. Further, complainants have sought delay interest w.e.f. 03.08.2020 in Complaint no. 1 of 2023 and 01.11.2020 in complaint no. 2985 of 2022 (within 24 months from the date of execution of agreement). Further, it is clear that possession has already been taken by the complainants and for



delay interest respondent has already placed on record an application dated 18.12.2024 showing receivables and payables.

45. In the present complaint, the complainant intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

*“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”.

46. Hence, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date i.e. 03.08.2020 in Complaint no. 1 of 2023 and 01.11.2020 in complaint no. 2985 of 2022 till the date on which a legally valid offer is made to them after obtaining occupation certificate. i.e, 19.01.2024 (as ascertained in para 43 of the order). The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

(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;

47. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e. 22.07.2024 is 9%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11%.

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

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

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”.

48. Firstly, in Complaint no. 1 of 2023, Authority has calculated the interest on total paid amount i.e, ₹34,52,564/- from the deemed date of possession i.e., 03.08.2020 till legally and valid offer of possession is made by the respondent, i.e., 19.01.2024 at the rate of 11%, and said amount works out to ₹12,58,561/- as per detail given in the table below:



A. IN COMPLAINT NO. 1 OF 2023

Sr. No.	Principal Amount	Deemed date of possession (03.08.2020) or date of payment whichever is later	Interest Accrued till the date of valid offer of possession is made by respondent to the complainant i.e., 19.01.2024	Receipts (information)
1.	₹3,00,000/-	03.08.2020	₹1,14,370/-	Receipts attached by the complainant in her complaint book from page no. 19 to 21
2.	₹5,00,000/-	03.08.2020	₹1,90,616 /-	
3.	₹32,187/-	03.08.2020	₹12,271/-	
4.	₹3,44,792/-	03.08.2020	₹1,31,446/-	Receipts attached by the respondent in his application dated 18.12.2023 from page no. 10 to 20
5.	₹2,06,876/-	03.08.2020	₹78,868/-	
6.	₹4,13,752/-	03.08.2020	₹1,57,736/-	
7.	₹2,06,876/-	03.08.2020	₹78,868/-	
8.	₹2,06,876/-	03.08.2020	₹78,868/-	
9.	₹1,41,553/-	10.08.2020	₹53,666/-	
10.	₹1,37,918/-	04.09.2020	₹51,249/-	
11.	₹2,06,876/-	31.10.2020	₹73,319/-	
12.	₹2,75,834/-	11.01.2021	₹91,773/-	
13.	₹2,75,834/-	12.03.2021	₹86,786/-	
14.	₹2,03,190/-	05.06.2021	₹58,725/-	
	Total=₹34,52,564/-		Total= ₹12,58,561/-	

49. Secondly, in Complaint no. 2985 of 2022, Authority has calculated the interest on total paid amount i.e., ₹37,59,152/- from the deemed date of possession i.e., 01.11.2020 till legally and valid offer of possession is made by the respondent, i.e., 19.01.2024 at the rate of 11%, and said amount works out to ₹13,28,141/- as per detail given in the table below:



B. IN COMPLAINT NO. 2985 OF 2022

Sr. No.	Principal Amount	Deemed date of possession (01.11.2020) or date of payment whichever is later	Interest Accrued till the date of valid offer of possession is made by respondent to the complainant i.e., 19.01.2024	Receipts (information)
1.	₹3,50,000/-	01.11.2020	₹1,23,938/-	Receipts attached by the complainant in her complaint book from page no. 22-28
2.	₹2,50,000/-	01.11.2020	₹88,527/-	
3.	₹2,50,000/-	01.11.2020	₹88,527/-	
4.	₹2,00,000/-	01.11.2020	₹70,822/-	
5.	₹2,12,940/-	01.11.2020	₹75,404/-	
6.	₹2,25,600/-	01.11.2020	₹79,887/-	
7.	₹4,50,930/-	01.11.2020	₹1,59,679/-	
8.	₹4,51,020/-	01.11.2020	₹1,59,711/-	Page no. 94 of the complaint book
9.	₹1,54,748/-	01.11.2020	₹54,798/-	Receipts attached by the respondent in his application dated 08.08.2023 from page no. 31 to 37
10.	₹1,46,585/-	01.11.2020	₹51,907/-	
11.	₹2,25,510/-	01.11.2020	₹79,855/-	
12.	₹3,00,681/-	01.11.2020	₹1,06,474/-	
13.	₹2,21,456/-	07.11.2020	₹78,019/-	
14.	₹70,000/-	07.11.2020	₹24,661/-	
15.	₹2,49,682/-	04.12.2020	₹85,932/-	
	Total=₹37,59,152/-		Total= ₹13,28,141/-	

50. Further, complainants are also seeking reliefs of compound interest @ 21% from the due date of delivery of possession till actual handing over of physical possession and to compensate the complainants for the interest paid



@ 8.40% p.a. by her on the loan availed for the purchase of the said allottee apartment. Firstly, the complainants did not raise or argue these specific claims during the hearing. Secondly, the request for compound interest due to the delay in handing over possession is not legally tenable. The Authority, while exercising its powers, is permitted to award only simple interest for delays in possession, as stipulated under the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA). There is no provision in RERA that allows the grant of compound interest in such cases. Additionally, with respect to the delay in possession, the Authority has already directed the respondent to pay delay interest to the complainant as per Section 18(1) of the RERA Act. The relief sought by the complainants cannot override or supersede the statutory provisions of RERA, 2016. Furthermore, the complainants seek compensation for the interest paid at 8.40% per annum on the loan availed for the apartment purchase. However, the complainants have not pointed to any specific clause in the agreement that entitles her to such compensation. In the absence of a contractual provision or legal basis supporting this claim, the Authority lacks the power to adjudicate and grant this relief. In conclusion, the claims for compound interest and compensation for the loan interest lack legal merit, and the Authority is bound by the



provisions of the RERA Act, 2016, in granting relief. Therefore, these claims cannot be adjudicated.

51. Ld. counsel for complainants also argued with regard to the problem of seepage in washroom faced by the complainant in complaint no. 1 of 2023 residing in the project. With regard to the same, the Authority is of the view that the respondent had already received the Occupation Certificate (OC) for the project on 19.10.2020, certifying that the project was fit for occupation. Despite the availability of the OC, legally valid possession was not offered as a result of which the complainant took possession of the unit after a considerable delay of four years. This delay in taking possession may have contributed to the deterioration of certain aspects of the unit, including the development of seepage. Further, the Authority also considered the climatic conditions prevalent in India, acknowledging that due to the high levels of humidity, rain, and temperature fluctuations, issues such as seepage are common in many buildings. These conditions are often a natural consequence of environmental factors and are not necessarily indicative of defective construction. Minor repairs, maintenance, and upkeep are generally expected in residential buildings over time. Further, Authority also considered the application dated 05.02.2024 filed by the respondent wherein respondent acknowledged the seepage issue raised by the complainant. The respondent



indicated that while the issue would be addressed, the complete repair of the seepage would depend on the time required for the moisture to dry. The respondent's statement in the application reads: *"It would be relevant to mention that the seepage will be repaired, but since the moisture takes some time to dry, the company is undertaking that as and when the moisture is completely dry, the pending repair work will be completed."* Authority is of the view that respondent is willing to rectify the problem and acknowledges the technical challenges associated with moisture drying in the case of seepage repairs. The Authority finds that the respondent's approach, which requires waiting for the moisture to dry before completing the repairs, is reasonable under the circumstances.

52. Furthermore, if complainant is willing to get compensation with regard to the problems occurring due to the workmanship defects then, complainant is at liberty to file a new complaint before the Hon'ble Adjudicating Officer and seek relief of compensation for failure in obligation to rectify the defect by the builder/ promoter, u/s 14(3) of the RERA, Act 2016. Relevant provision is reproduced hereunder:

"14(3)- In case any structural defect or any other defect in workmanship. Quality, provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the



date of handing over possession, it shall be duty of the promoter to rectify such defects without further charge, within thirty days and in event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation the manner as provided under this Act."

53. The complainants are also seeking compensation of ₹5,00,000/- for harassment, mental agony and undue hardship caused to the complainant on account of deficiency in service and unfair trade practices and a sum of ₹2,50,000/- as litigation expenses and cost. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 litigation expenses.




H. DIRECTIONS OF THE AUTHORITY

54. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹12,58,561/- in complaint no. 1 of 2023 and ₹13,28,141/- in complaint no. 2985 of 2022 to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order.
- (ii) The rate of interest chargeable from the allottees 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 to the allottees on the amount deposited by the complainants.

Disposed of. File be consigned to the record room after uploading of the order on the website of the Authority.


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]