

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

Complaint no.: 509 of 2023
Order Reserved on: 08.08.2024
Order pronounced on: 26.09.2024

Krishan Lal Johar (HUF)
R/o :- 174/10 A, Sainik Farms, New Delhi- 110062

Complainant

Versus

Anjali Promoters and Developers Private Limited
Regd. Office at:- OT-14, 3rd Floor, Next Door Parklands,
Sector-76 Faridabad, Haryana

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Sumit Mehta (Advocate)
Shri Harshit Batra (Advocate)

**Complainant
Respondents**

ORDER

1. This 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 provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if



any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Centra One
2.	Project location	Sector 61, Gurugram
3.	Nature of Project	Commercial Complex
4.	Date of booking application form	17.07.2008 [page no. 65 of the reply]
5.	Date of allotment	10.06.2008 [page no. 77 of the reply]
6.	Unit No. (Old)	808, 8 th Floor [page no. 34 of the complaint]
7.	Unit Area	1000 sq. ft. [page no. 34 of the complaint]
8.	Unit No. (New)	706, 7 th Floor [page 104 of reply]
9.	Unit Area (New)	1098 sq. ft. [page 104 of reply]
10.	Date of agreement for sale	20.07.2011 (Page 28 of complaint)
11.	Possession clause	<p>Clause 2 Possession</p> <p>2.1 The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31st December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser.</p> <p>2.2 The intending purchaser shall only be entitled to the possession of the said premises after making full payment of the consideration and other charges due and payable. Under no circumstances shall the possession of the said</p>

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		<p>premises be given to the intending purchaser unless all the payments in full, along with interest due, if any, have been made by the intending purchaser to the intending seller. However, subject to full payment of consideration along with interest by the intending purchaser, if the intending seller fails to deliver the possession of the said premises to the intending purchaser by 30th June 2012, however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending Purchaser, then the intending seller shall be liable to pay penalty to the intending purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said premise by giving appropriate notice to the intending purchaser in this regard. If the intending seller has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by June 2012 is attributable to any delay on part of DTCP/ competent authority, then the Intending Seller shall not be required to pay any penalty under this clause.</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>[page no. 37-38 of complaint]</p>
12.	Due date of possession	30.06.2012 [Note: Grace period included]
13.	Basic sale consideration	Rs.50,20,000/- [page no. 35 of complaint]
14.	Total sale consideration after increment in area	Rs. 71,16,128/- [page no 144 of reply]
15.	Amount paid by the complainant	Rs.48,84,159 /- [page no. 23 of the reply]
16.	Reminder /Demand Letters issued to complainant	31.05.2011, 07.07.2012, 25.12.2012, 24.01.2013, 27.02.2013, 01.04.2013, 01.05.2013, 25.06.2013, 25.07.2013, 26.08.2013, 26.09.2013, 28.10.2013, 28.01.2014, 12.03.2014, 14.04.2014, 08.12.2014, 16.02.2015, [Page no. 104-137 of reply]
17.	Termination Letter Dated	29.11.2019 [Page no. 159 of reply]

18.	Occupation certificate	09.10.2018 [page no. 140 of the reply]
19.	Offer of possession	17.12.2018 [page no. 142 of the reply]

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. The complainant Krishan Lal Johar (HUF) is a Hindu Undivided Family being represented by its Karta Mr. Krishan Lal Johar is allottee of the real estate project "Centra One" by M/s. Anjali Promoters and Developers Pvt. Ltd. As per the initial discussions with the Respondent no. 1 & 2, the complainant had expressed for a direct allotment but the respondents, instead of allotting a fresh unit, introduced the complainant with one Mr. Vikas Yadav, and accordingly the original allotment was transferred/endorsed in the name of the complainant by the way of a transfer, in respect to an office space/unit bearing no.08-808 admeasuring 1000 sq ft, in project 'Centra One'. Sector-61, Gurgaon, Haryana, at the rate BSP of Rs.5,020/- per sq ft for a total sale consideration of Rs.50,20,000/-. The respondents had issued specific endorsements, in respect to the amounts already paid against the unit and the ownership of the unit to the complainant and an allotment letter was accordingly issued in the name of the complainant.
- II. Post endorsement of the unit in the name of the complainant, the complainant made all the payments in a timely manner as and when demands were raised by the respondents. The complainant sent a letter dated 10.09.2008 stating that 45% of the value of the unit has already been paid and nothing has been done at site. Despite that without starting any construction, the respondents sent another demand letter dated 14.10.2008. In response to the said letter dated 14.10.2008, the



complainant sent a reply dated 27.10.2008 and pointed out that there is no progress on the project. The complainant sent another letter dated 18.02.2009 and pointed out that no construction activity is going at site. That, even after raising concerns regarding non completion of project several times, the respondents completely ignored the concerns raised by the complainant and continued to issue demand letters dated 15.05.2009 and 28.03.2011.

- III. After lapse of more than 5 years, the complainant was asked to sign "Space Buyers Agreement" dated 20.07.2011 (BPTP Centra One) for said unit bearing No.08-808 in on the standard format provided by the respondents on dotted lines. The complainant could not have agreed with such arbitrary and one-sided terms incorporated in the said buyers' agreement, though, it was represented by the respondents that it is just a formality and the complainant signed it without perusing it properly and more so was in urgent need of office for his own use. Though, initially a copy of the said buyers' agreement was not provided to the complainant, however, after repeated request a copy of the same was given to the complainant. It is needless to state here that the Respondents categorically pointed out to "clause 2" of the said buyers' agreement and had categorically assured the complainant in writing that the possession of his unit shall be offered by the company on 31.12.2011.
- IV. All throughout the years, as and when the complainant visited the site, the complainant was shocked and surprised to see that no construction work is going on and upon contact, the respondents assured to complete the project, in time, however, totally failed in doing so. The respondents sent demand notices dated 26.08.2013, 26.09.2013, 28.10.2013, 27.11.2013, 28.01.2014, 07.02.2014, 06.05.2014 and 08.12.2014.

- V. Furthermore, the respondents, through their letter dated 08.12.2014, illegally demanded an amount of Rs.62,20,311/- as outstanding, whereas, the total sale consideration of the unit allotted to the complainant is Rs. 50,20,000/-, out of which Rs 49,84,159/- has already been paid by the complainant. The complainant sent a reply notice dated 31.12.2014 stating that the respondents have failed to deliver the possession despite passing of several years and have wrongly raised demands in respect of unit/ space no.07-706, which is not the unit allotted to the complainant (unit allotted to the Complainant is 808, on the 8th floor).
- VI. Further, the respondents sent a termination notice dated 16.02.2015 in respect of unit No 07-706, which is not the unit allotted to the complainant, to which the complainant replied vide reply dated 02.03.2015 demanding possession of its unit. That, the respondents again completely ignored the reply of the complainant and sent another demand letter dated 04.12.2015 in respect of the wrong unit no. 07-706.
- VII. The buyer's agreement was executed only on 20.07.2011, after lapse of more than 5 year from the date of booking. Whereas the construction was not proceeding according to the promised construction plan and the complainant has already paid more than 90% of the total sale consideration. It is imperative to note here that the respondents, in order to play trickery with its bona fide buyers, offered possession for the wrong unit and even after offering possession, continued to raise wrong and illegal demands from the complainant in respect of the wrong unit.
- VIII. Moreover, as per clause 2.1 of the buyer's agreement, respondents had committed to handover possession by 31.12.2011. As per clause 2.2 of the agreement in case of any delay the possession was committed to be delivered by 30.06.2012 and in case possession is not handed over by 30.06.2012 then the complainant is entitled to receive a sum of Rs.15/-

per Sq. Ft., per month, as penalty till delayed possession. Undisputedly, there is a delay of 12 years in handing over possession of the space to the complainant.

- IX. The complainant had originally approached the Hon'ble NCDRC, New Delhi, vide complaint no. 224 of 2019, to seek justice, but the complainant after perusing its rights before the Hon'ble NCDRC, got the knowledge that the said project has already been completed and the respondents have already offered possession of multiple units in the said projects to numerous buyers and thus, it gave a fresh ray of hope to the complainant that the said allotted unit can now be obtained for the first time and thus, in order to peruse the right remedy under law, had withdrawn the said complaint from NCDRC, New Delhi, to approach the present learned Authority by the way of separate complaint.
- X. That the complainants invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent in order to allure the complainant. However, the respondent failed to abide all the obligations of him under the builder buyer agreement duly executed between both the parties. Consequently, feeling aggrieved by the actions of the respondent company, the complainant has resorted to file complaint under Section 31 of the Real Estate Regulation and Development Act, 2016, along with rule 28 of Haryana Real Estate (Regulation and Development) rules, 2017, seeking redressal for their grievances before the authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay delayed possession charges at the prescribed rate accrued from due date of possession till offer of possession.



- ii. Direct the respondent handover physical possession of the unit.
 - iii. Direct the respondent to pay compensation on account of loss of monthly rental income at the rate of Rs 1,00,000/- per month from the date of alleged offer of possession.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondent:

- I. The complainant booked a unit vide an application form dated 30.11.2008 by paying an amount of Rs. 3,55,000/- vide draft no. FRA235268 dated 21.11.2006 drawn on State Bank of India. That pursuant thereof, a unit bearing number 08-808, 8th Floor, tentatively admeasuring 1000 sq. ft. ("old unit") was allotted to the complainant vide allotment letter dated 17.07.2008. It is submitted that prior to approaching the respondents, the complainant had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regards to all aspects of the project, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents.
- II. A flat buyer's agreement dated 20.07.2011 was executed between the complainant and respondents ("agreement"). It is pertinent to mention that the flat buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- III. It is imperative to mention here that both the parties were obligated to fulfil their respective obligations as set out under the clause 1.2 of buyer's agreement. That the clause 1.2 categorically mentions that the unit of the complainant is tentative in nature and is subject to change during the

- completion of the construction of the said project and the same shall be confirmed to the complainant during the offer of possession.
- IV. In light of the said clauses, categorically agreed between the developer and the complainant, it is submitted that the unit allocated to the complainant was tentative and subject to change. on the basic of the same, the unit was changed and the new unit no. 706 on 7th floor, ad, 1098 sq. ft. ("unit") was allotted to the complainant which was duly communicated to the complainant vide letter dated 06.05.2014.
- V. The due date of offer of possession, as per clause 2.1 of the Agreement is 31.12.2011, however subject to the Clause 9 (force majeure) and strict adherence to the terms and conditions of the agreement by the complainant/allottee. The due date of delivery of the unit was subjective in nature and was dependent on the Force Majeure circumstances and the purchaser/allottee complying with all the terms and conditions of the buyer' agreement along with timely payments of instalments of sale consideration.
- VI. That it is most humbly submitted that the construction of the Unit was hampered due to and was subject to the happening of the force majeure and other circumstances beyond the control of the company. The respondents were faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. Additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in



serious challenges to the project with no available labourers, contractors etc. for the construction of the project

- VII. From the facts indicated above, it is comprehensively established that a period of 292 days was consumed on account of circumstances beyond the power and control of the respondent No.1, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure. Thus, the respondent no.1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the agreement.
- VIII. It needs to be seen that the development of the unit and the project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the complainant, which, the complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainant has delayed the payment against the unit. That the total sales consideration of the unit was Rs. 71,16,128.62/- out of which the complainants had only made payment of Rs. 48,84,159/- .
- IX. Due to the non-payment of the outstanding dues by the complainant even after various demands and reminder letters, the respondents were left with no other option but to terminate the unit of the complainant. Consequently, the unit of the complainant was terminated on 16.02.2015.
- X. It must be noted by the Hon'ble Authority that despite the default caused, the respondent applied for occupation certificate in respect of the said project and the same was thereafter issued dated 09.10.2018.

- XI. At this stage, it is imperative to state the bonafide of the respondents, that even after the termination of the said unit due to defaults in the remittance of outstanding payments by the complainant, the respondent had provided one more opportunity to the complainant in order to pay the outstanding dues and hence had sent the offer of possession of the unit to the complainant dated 07.12.2018 after due completion of the project and receiving of the occupation certificate dated 09.10.2018 subject to the payments of the outstanding dues but the complainant miserably fails to do so and had not cleared the outstanding dues.
- XII. Due to non-payments of the outstanding dues even after a bunch of opportunities provided by the respondents, the respondents were left with no other option but to terminate the unit of the complainant and hence, the unit of the complainant was eventually terminated on 29.11.2019 as per clause 10.1 and 11 of the agreement. After the termination of the agreement, no right or lien of the complainant exists in the said unit and the builder-buyer relationship between the parties came to an end.
- XIII. Moreover, the present complaint is barred by limitation. That as noted above, the Unit of the complainant was terminated on 29.11.2019. Thereafter, the notice for the present complaint was issued on 23.02.2023, i.e., after 1182 days, i.e., 3 years 2 months and 25 days. As such, the present complaint is barred by limitation. That no cause of action persists as on date and hence, the present complaint is liable to be dismissed.
- XIV. 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:

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial Jurisdiction:

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

E.II Subject-matter Jurisdiction:

8. 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)(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.

9. 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 complainant at a later stage.

F. Findings on the objection raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances



10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Environmental Pollution Prevention & Control Authority, NGT, Haryana State Pollution Board, and other Authorities to curb the pollution in NCR and outbreak of Covid-19 pandemic. 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 2.1 of agreement dated 20.07.2011 executed between the parties, the due date of handing over of possession was provided as 30.06.2012. Grace period of 6 months is allowed being unconditional. The respondent-builder in the instant matter has already obtained the occupation certificate of the complainant unit from the competent authority on 09.10.2018. Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation.
11. The respondent's invocation of the force majeure clause, citing the COVID-19 pandemic as a reason for non-performance, is without merit in this case. The contractual due date for possession was stipulated as 30.06.2012. This deadline occurred well before the imposition of the nationwide lockdown on 20.03.2020, which was a direct response to the pandemic. Therefore, the circumstances cited by the respondent as force majeure did not affect their ability to fulfil the contractual obligation by the specified due date. As such, the plea based on the alleged impact of the pandemic is not tenable. 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.

F.II Objection regarding complaint being barred by the limitation

12. As far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
13. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
14. In the present matter, the cause of action arose on 29.09.2019, when the respondent terminated the unit. The complainant subsequently filed the present complaint on 22.02.2023, i.e., after a period of 3 years, 2 months, and 25 days from the date of the cause of action. Notably, the period from 15.03.2020 to 28.02.2022, is to be excluded from this calculation. In light of these considerations, the Authority finds that the present complaint has been filed within a reasonable time frame and is therefore not barred by the statute of limitations.

F.III Objection regarding delay in payment

15. Another objection raised by the respondent regarding delay in payment by many allottees is totally invalid because the allottees have already paid the amount of Rs. 48,84,159/- against the basic sale consideration of Rs. 50,20,000/- to the respondent. The fact cannot be ignored that there might

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be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainant in the instant case. As per the payment plan, 5% of BSP+ Registration and other applicable charges were to be paid at the time of offer of possession. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainant has paid 97% of the basic sale consideration as per payment plan duly agreed upon by the complainants while signing the agreement. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent stands rejected. The fact of inordinate delay of 7 years after offer of possession cannot be ignored and the respondent/ promoter has not followed in any delay compensation while raising demand of balance amount which otherwise is payable in terms of clause 2.2 of buyer's agreement duly executed between the parties.

G. Findings on the relief sought by the complainant

G.I. Direct the respondent to pay delayed possession charges at the prescribed rate accrued from due date of possession till offer of possession.

16. The respondent, in its written submissions, contended that the total sale consideration for the unit amounts to Rs. 71,16,128.62/- inclusive of development charges, PLC, car parking, electrification and STP charges, fire-fighting charges, delayed interest, power backup, service tax, and GST. However, it is observed that according to BBA, the complainant opted for a construction-linked payment plan, under which charges for EDC/IDC, car parking, and 100% of the PLC are to be paid prior to the execution of the agreement and charges such as EC, MC, CD, IFMS, and SF are to be settled upon the offer of possession.

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17. Upon perusal of documents and pleadings made by the respondent in his reply, it has been found that allotment of booked unit was cancelled by the respondent due to non-payment of amount. At the time of the cancellation of the allotment of the unit, the respondent had already received an amount of Rs. 48,84,159/-, constituting 97% of the basic sale price of the unit, which is Rs. 50,20,000/-. The complainant's inability to fulfil the requested payment due to the promoter's failure to complete the project by the promised date is deemed justifiable as the complainant was allotted unit no. 808 as per the allotment letter dated 10.06.2008. Subsequently, the builder-buyer agreement was executed five years later, on 20.07.2011. According to clause 2.1 of the BBA, possession of the unit was to be handed over by 31.12.2011 excluding the grace period. A grace period of six months is being granted unconditionally; hence, the due date for the handing over of possession is established as 30.06.2012. However, on 16.02.2015, the respondent issued a termination letter, unlawfully cancelling the booking of unit no. 808. Following this, the respondents re-allotted a new unit within the same project in lieu of the original unit. On 07.12.2018, an offer of possession was issued for the re-allotted unit, which was subsequently terminated by a letter dated 29.11.2019. The original unit no. 808 located on the 8th floor, was unilaterally modified to reflect unit no. 706 without the complainant's consent. Furthermore, no offer of possession has been made concerning the unit allotted in the BBA.
18. The respondent has retained the complainant's funds, including accrued interest, for an extended period of eight years without providing a refund following the initial cancellation. Furthermore, in 2019, the respondent unilaterally changed the assigned unit and increased the sales consideration without the complainant's consent. This conduct constitutes unfair trade practices, as the respondent has failed to complete the project within the

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agreed timeframe, terminated the unit on two occasions, and altered the terms of the agreement by increasing total sale price. It appears that the respondent has unlawfully benefited from the complainant's payments while delaying project completion. Consequently, the promoter's conduct in demanding additional payments from the complainants is found to be unjustifiable, given that they had already remitted a substantial portion of the basic sale consideration and the remaining amount was to be paid upon the offer of possession adjusting the delayed possession interest. Therefore, the alleged cancellation on these grounds is untenable and is hereby quashed.

19. In the present complaint the complainant intend 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

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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

20. Clause 2.1 of buyer's agreement provides for handing over of possession and is reproduced below:

Clause 2.1

The possession of the said premises shall be endeavoured to be delivered to the intending purchaser by 31st December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser."

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2.2 The intending purchaser shall only be entitled to the possession of the said premises after making full payment of the consideration and other charges due and payable.... However, subject to full payment of consideration along with interest by the intending purchaser, if the intending seller fails to deliver the possession of the said premises to the intending purchaser by 30th June 2012, however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending Purchaser, then the intending seller shall be liable to pay penalty to the intending purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said premise by giving appropriate notice to the intending purchaser in this regard. If the intending seller has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by June 2012 is attributable to any delay on part of DTCP/ competent authority, then the Intending Seller shall not be required to pay any penalty under this clause.

(Emphasis supplied)

21. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
22. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the

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rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

23. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges 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.

24. 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.

25. 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., 19.09.2024 is @ 9 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

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26. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

27. 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 them in case of delayed possession charges.

28. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 20.07.2011, the possession of the said unit was to be delivered on 31.12.2011 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 30.06.2012. In the present complaint the complainant was offered possession by the respondent on 17.2.2018 after obtaining occupation certificate dated 09.10.2018 from the competent authority. The authority is of view that there

is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 20.07.2011 executed between the parties.

29. 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 09.10.2018. The respondent offered the possession of the unit in question to the complainants only on 17.12.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (17.12.2018) which comes out to be 17.02.2019.

30. Accordingly, the non-compliance of the mandate contained in in Section 11 (4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11 % p.a. w.e.f. 30.06.2012 till expiry of 2 months from the date of offer of possession (17.12.2018) i.e., up to 17.02.2019 as per provisions of Section 18(1) of the Act read with rule 15 of the rules.

G.II. Direct the respondent to handover physical possession of the unit

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31. In the present complaint the complainant was offered possession by the respondent on 17.12.2018 after obtaining occupation certificate dated 09.10.2018 from the competent authority for the re-allotted unit, which was subsequently terminated by a letter dated 29.11.2019. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 20.07.2011 executed between the parties and the termination of the said unit is unlawful and bad in eyes of law.

G.III. Direct the respondent to pay compensation on account of loss of monthly rental income @ Rs. 1,00,000/- per month.

32. 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 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants 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 of the authority

33. 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):

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- i. The respondent is directed to reinstate the cancelled unit no.706 and handover the physical possession of the unit to the complainant.
 - ii. The respondent is also directed to pay delay possession interest to the complainant against the paid-up amount at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 30.06.2012 till expiry of 2 months from the date of offer of possession (17.12.2018) i.e., up to 17.02.2019.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days.
 - iv. 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.
34. Complaint stands disposed of.
35. File be consigned to the registry.

Dated: 26.09.2024



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

HARERA
GURUGRAM