

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

<b>Complaint filed on:</b>	<b>14.10.2022</b>
<b>Order reserved on:</b>	<b>05.09.2024</b>
<b>Order pronounced on:</b>	<b>14.11.2024</b>

NAME OF THE BUILDER		M/s Apex Buildwell Private Limited	
PROJECT NAME		"Our Homes"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6434/2022	Devender Kumar V/S M/s Apex Buildwell Private Limited	Shri Sunil Kumar Advocate
2.	CR/6647/2022	Pradueman Dev V/S M/s Apex Buildwell Private Limited	Shri Harshit Batra Advocate

**CORAM:**

**Shri Vijay Kumar Goyal**

**Member**

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Our Homes**" (Affordable Group Housing Project) being developed by the same respondent/promoter i.e., M/s Apex Buildwell Private Limited.

terms and conditions of the buyer's agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and others.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>Our Homes at Sector - 37 C, Gurugram.</b>
<b>Occupation Certificate: - 29.11.2019</b>	
<b>Possession Clause: -</b>	
3(a). .... <i>the DEVELOPER proposes to handover the possession of the APARTMENT within a period of 36 months, with a grace period of 6 month, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plan/ revised plan and approval of all concerned authorities including 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, restrains or restriction from any court/authorities.</i> .....	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell and Offer of possession	Due date of possession	Total Consideration/Total Amount paid by the complainants in Rs.
1.	CR/6434/2022  Devender Kumar V/S M/s Apex Buildwell Private Limited  Date of Filing of	Reply received on 28.12.2023	937 on 9 <sup>th</sup> floor, Tower Lotus,  Area admeasuring 48 sq. mt.  [As per page no. 25 of the complaint]	22.02.2013  (As per page no. 22 of the complaint)  <b>Offer of possession: - 01.12.2019</b>  (Page no. 26 of the reply)	02.06.2017  [Calculated from the consent to establish i.e., 02.12.2013 + a grace period of 6 months is being granted unconditional]	TSC: - 16,00,000/- (As per page no. 25 of the complaint)  AP: - 16,00,000/-  (Exclusive of stamp duty on page no. 27 of reply)

	complaint 14.10.2022					
2.	CR/6647/ 2022  Pradueman Dev V/S M/s Apex Buildwell Private Limited  Date of Filing of complaint 31.01.2022	Reply received on 28.12.2023	522 on 5 <sup>th</sup> floor, Tower Rose  Area admeasuring 48 sq. mt.  (As per page no. 26 of the complaint)	<b>25.01.2013</b>  (As per page no. 21 of the complaint)  <b>Offer of possession: - 01.12.2019</b>  (As per page no. 28 of the reply)	02.06.2017  [Calculated from the consent to establish i.e., 02.12.2013 + a grace period of 6 months is being granted unconditional]	TSC: - 16,00,000/-  (As per page no. 26 of the complaint)  AP: - 16,00,000/-  (Exclusive of stamp duty on page no. 27 of reply)

**The complainant in the above complaints have sought the following reliefs:**

1. Direct the respondent to pay delay possession charges with prescribed rate of interest.
2. Direct the respondent to pay litigation cost of Rs. 21,000/-

**Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of handover the physical possession of the allotted unit along with delayed possession charges and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are

also similar. Out of the above-mentioned case, the particulars of lead case **CR/6434/2022 titled as Devender Kumar vs Apex Buildwell Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua of handover the physical possession of the allotted unit along with delayed possession charges and others.

**A. Project and unit related details**

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

**CR/6434/2022 titled as Devender Kumar vs Apex Buildwell Private Limited**

S. No.	Heads	Information
1.	Name and location of the project	"Our Homes", Sector 37 C, Gurugram, Haryana
2.	Nature of the project	Affordable Group Housing project
3.	Project area	10.144 acres
4.	DTCP License	13 of 2012 dated 22.02.2012 valid till 01.12.2019
5.	HRERA registered/ not registered	40 of 2019 dated 08.07.2019 valid up to 01.12.2019
6.	Application dated	26.09.2012 (As per page 24 of the complaint)
7.	Date of execution of apartment buyer's agreement	22.02.2013 (As per page no. 22 of the complaint)
8.	Unit no.	937 on 9 <sup>th</sup> floor, Tower Lotus (As per page no. 25 of the complaint)
9.	Super Area	48 sq. mt. (As per page no. 25 of the complaint)
10.	Possession clause	3(a). .....

		<p><i>the DEVELOPER proposes to handover the possession of the APARTMENT within a period of 36 months, with a grace period of 6 month, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plan/ revised plan and approval of all concerned authorities including 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, restrains or restriction from any court/authorities.</i></p> <p>..... (As per page 31 of the complaint)</p>
11.	Due date of delivery of possession	02.06.2017
12.	Consent to Establish	02.12.2013
13.	Basic sale consideration	Rs.16,00,000/- (As per page no. 25 of complaint)
14.	Total amount paid by the complainant	Rs.16,00,000/- exclusive of stamp duty (As per page no. 27 of reply)
15.	Occupation Certificate	29.11.2019 (As per page no. 23-24 of reply)
16.	Offer of Fit-Out Possession	03.06.2019 (As per page no. 54 of the complaint)
17.	Offer of possession	01.12.2019 (As per page no. 26 of reply)
18.	Conveyance Deed	11.12.2020 (As per page no. 27-68 of reply)

**B. Facts of the complaint**

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

- a. That the instant complaint is preferred under section 31 read with section 18 of the Act, 2016 for the benefit of the complainant, who is

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buyers in a residential real estate project. By way of this complaint, the complainant seeks the relief of delay possession charges contemplated under section 18 of the Act along with interest deposited towards the total consideration of Rs.16,00,000/- of their respective unit "937 on 9<sup>th</sup> Floor in Tower- Lotus" with interest in the project 'Our Homes' in Sector 37 C, Gurgaon, Haryana.

- b. That as per clause 3 (a) of the builder buyer's agreement, possession of the dwelling unit was to be delivered by the respondent/promoter within thirty-six months (36) (including a further six (6) months grace period) 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.
- c. That, the date for giving possession has expired for the complainant of the dwelling unit and the occupation certificate was obtained on 29.11.2019. The complainant has paid allotment money of Rs.16,00,000/- towards the price of the dwelling unit pursuant to the representations made by the respondent. The entire episode and dealings with the respondent have caused much anguish and frustration to the complainants and can no longer afford to wait and are forced to seek delayed possession charges on the entire principal amount paid along with interest.
- d. That balance lies in favour of complaint who has invested hard-earned savings with the respondent. Thus, complainant has requested this authority to allow the complaint.
- e. That complainant has invested life savings to make payments to the respondents. The failure of the respondents to deliver possession of the units has caused immense prejudice on the complainant. That the unfair

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trade practices of the respondents are evident from the fact that if allottees defaulted in making payments of any instalments, the same would have invited forfeiture and cancellation at their option.

- f. That the facts which make the filing of the present complaint necessary are enumerated herein below:
- i. An apartment-buyer agreement was executed on 22.02.2013, between the complainant (buyer) and respondent (builder).
  - ii. According to clause 3(a) of the A.B.A., the due date comes out to be 36 months from the agreement date, with an additional grace period of 6 months, totalling a deadline of 02.06.2017.
  - iii. Subsequently, the conveyance deed was executed between the parties on 11.12.2020, approximately 3.7 years after the delayed offer of possession.
  - iv. Notwithstanding the execution of the conveyance deed, construction activities at the project site continue as evidenced by recent pictures dated 05.03.2022.
- g. That the respondent being the builder and marketer respectively are enjoying the substantial amount of consideration paid by the complainant and other allottees of the project. On the other hand, they after having paid substantial amount of consideration towards the unit are still empty handed. They have wasted several years in attempting to purchase a home and have also lost out on other interest yielding investments.
- h. That the cause of action arose when the respondents failed to handover the possession of the unit as agreed upon. The cause of action is a continuous one and continues to subsist as the respondents has not redressed the grievances of the complainants.

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**C. Relief sought by the complainant: -**

9. The complainant has sought following relief(s)
- Direct the respondent to pay delay possession charges with prescribed rate of interest.
  - Direct the respondent to pay litigation cost of Rs. 21,000/-.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

11. The respondent contested the complaint on the following grounds: -
- That 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, Gurugram (hereinafter referred to as "the Project"). The complainant approached the respondent and applied for allotment of an apartment on 26.09.2012 which was duly accepted by the respondent. Consequently, the complainant was allotted apartment bearing no. 937, Tower Lotus in the project (hereinafter referred to as the "unit") for a sale consideration for Rs. 16,00,000/-. Furthermore, the parties jointly executed an Apartment Buyer's Agreement (hereinafter to as the "ABA") on 22.02.2013 with respect to the unit which encapsulated the agreed terms between the parties.
  - It is submitted that possession of the unit was offered to the complainant on 01.12.2019. Thereafter, a buyer's agreement dated 22.02.2013 was executed between the parties. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.

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- c. The due date of possession clause provided under clause 3(a) of the builder buyer agreement was subjective in nature and hence shall depend on the allottee/complainant complying all the terms and conditions of the agreement. Hence, the due date of offer of possession was subjected to the force majeure circumstances and the complainant having complied with all the terms and conditions of the builder buyer agreement.
- d. It is undisputed that a conveyance deed dated 11.12.2020 has been executed between the complainant and the respondent qua the unit. Therefore, by upon execution of the conveyance deed and taking over physical possession of the unit, the complainant has voluntarily waived off all claims and objections against the respondent qua the unit.
- e. The various reasons as to why the present complaint and the reliefs therein are entirely non-sustainable are briefly adverted to below without prejudice to one another and in the alternative:
- The alleged delay caused due to force majeure reasons which were beyond the control of the respondent. The delay, if any, in delivery of possession was primarily caused due to inordinate and excessive delay by the DTCP in renewal of respondent's license under the Act. 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.
  - In the present case, the last approval was the consent to establish granted on 02.12.2013. As per the terms of the ABA and the DTCP 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. However, the license of the respondent "expired" in February, 2016, and the respondent was forced to apply for renewal, even though at least 10 months (till

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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. Thus, at the time when the respondent was applying for renewal, it had 1 year and 10 months (22 months) remaining as a matter of right.

- After the respondent's application for renewal on 11.02.2016, the DTCP took an excessive and unreasonable period of 37 months (i.e., more than 3 years) to extend the respondent's license and renewed it only on 26.04.2019. It is submitted that the said period of 37 months ought to be excluded from the calculation of time period for delivery of possession of the apartment.
- Suspension/ restrictions imposed on construction in Haryana by various pollution control authorities. 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 respondent was wrongfully deprived of 10 months of construction period which was remaining a on 21.02.2016. 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 DTCP 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 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 lastly in the months of October - November, 2019 in the State of Haryana have further led to delay in completion of the project which are per se beyond the control of the appellant.
- The construction activity was suspended in Gurugram by the Hon'ble National Green Tribunal vide its orders dated 09.11.2017 and 14.11.2017 in the matter of Vardhaman Kaushik vs. UOI bearing Original Application no. 21/2014 on account of severe air quality in the NCR region. 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.

- The respondent had 1 years' additional period for completing construction as per DTCP notification dated 30.05.2014. By virtue of notification dated 30.05.2014 bearing No. PF-70/11350, the DTCP granted all affordable housing projects 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.
- f. That by voluntarily agreeing to the above-mentioned clause 3 of ABA, the complainant has willingly waived its right to claim compensation from the Respondent in relation to any extension of delivery date on account of valid reasons as mentioned in the said clause. Thus, the prayer seeking interest for delayed possession, if allowed by this Hon'ble Authority would result in varying the terms of the agreement between the parties. Hence, the said prayer is not maintainable.
- g. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and written submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

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

**Section 34-Functions of the Authority:**

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

15. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding delay due to force majeure events.**

16. The respondent-promoter contends that the delay in the construction of the project was attributable to force majeure events, including the inordinate and excessive delay in the renewal of the respondent's license by the Department of Town and Country Planning (DTCP) under the Haryana Development and Regulation of Urban Areas Act, 1975, restrictions and suspensions on construction imposed by various pollution control authorities in Haryana, the implementation of various social schemes by the Government of India, and various orders passed by the National Green Tribunal (NGT). However, the said contentions are devoid of merit, as the respondent-promoter has failed to deliver possession of the project within the timeline stipulated in the apartment buyer agreement dated 22.02.2013. The force majeure claims raised by the respondent do not absolve it from the contractual obligation to hand over possession as agreed upon, and consequently, the respondent's failure to comply with the terms of the agreement constitutes a breach of contract.
17. Furthermore, while it is acknowledged that certain allottees may have failed to make timely payments of instalments but all the allottees cannot be expected to suffer for the actions of a few. The orders passed by the government, authorities, or courts imposing temporary bans on construction in the NCR region were for a brief period, and such contingencies should have been anticipated at the outset of the project. Therefore, these temporary setbacks cannot be cited as a justification for the respondent-promoter's delay in project completion. It is a well-established principle of law that a party cannot benefit from its own wrong, and as such, the respondent-promoter is not entitled to any leniency on the basis of the aforementioned reasons.

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**G. Findings on the relief sought by the complainant.**

**G.I Direct the respondent to pay delay possession charges with prescribed rate of interest.**

18. In the instant case instant case, the complainant wishes to continue with the project and is seeking DPC as provided under the proviso to sec 18(1) of the Act. Sec 18(1) proviso reads as under:

*Section 18: - Return of amount and compensation  
18(1). If the promoter fails to complete or is unable to give possession of  
an apartment, plot, or building,*

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

19. The complainant-allottee has paid full amount of Rs. 16,00,000/- against the sale consideration of Rs. 16,00,000/- for the unit in question to the respondent.
20. The promoter has proposed to hand over the possession of the apartment within a period of 36 months (excluding a grace period of 6 months) from the date of issuance of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans as per clause 30 of buyer's agreement. The period of 36 months with a grace period of 6 months expired on 02.06.2017 (calculated from date of consent to establish i.e. 02.12.2013). Since in the present matter, the ABA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
21. As per documents available on record, respondent has offered the possession of the allotted unit on 01.12.2019 after obtaining the occupation certificate from the competent authority on 29.11.2019. The complainant took a plea that offer of possession was to be made in 2017, but the respondent has failed

to handover the physical possession of the allotted unit within stipulated time frame.

**22. Admissibility of delay possession charges at prescribed rate of interest:**

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

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

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

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

23. 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.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 14.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

27. 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;”*

24. 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 buyer's agreement executed between the parties on 22.02.2013, and the due date of as per buyer's agreement as 02.06.2017. Occupation certificate was granted by the concerned authority on 29.11.2019 and thereafter, the possession of the subject flat was offered to the complainant on 01.12.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 22.02.2013 to hand over the physical possession within the stipulated period.

25. However, the respondent had raised a contention pertaining to execution of conveyance deed dated 11.12.2020. The respondent addressed the issue that conveyance deed had already been executed between the parties and hence the complainant has no locus standi to file present complaint w.r.t the reason that after execution of conveyance deed, mutual obligations of both the

parties stands discharged. Despite this, it remains undisputed that the respondent failed to provide possession of the unit by the agreed-upon possession date. This failure constitutes a breach of the contractual obligation under clause 3 of the buyer agreement by the respondent/promoter. Consequently, the respondent's failure to fulfil its obligations as per the buyer's agreement to deliver possession within the stipulated period entitles the complainant to claim delayed possession charges as a statutory right. Therefore, based on the aforementioned grounds, the contention of the respondent stands rejected.

26. 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 29.11.2019. The respondent offered the possession of the unit in question to the complainant only on 01.12.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
27. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 100% of sale consideration.

28. The promoter is responsible for all the obligations, responsibilities and functions under the provisions of the Act, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to continue with the project, without prejudice to any other remedy available, to pay the delay possession charges on amount received by him in respect of the unit with interest at such rate as may be prescribed.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled delayed possession charges at the prescribed rate of interest i.e., @ 9.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the due date of possession till the date of offer of possession to the complainant.

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

30. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)**, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The

adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

## H. Directions of the Authority

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


- i. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e. 11.10% p.a. for from the due date of possession i.e., 02.06.2017 till the date of offer of possession i.e., 01.12.2019 plus two months or actual handing over of possession whichever is earlier 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.

32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

33. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

34. File be consigned to registry.

**Dated: 14.11.2024**

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