

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

Complaint no.: 2602 of 2023
Date of complaint: 07.06.2023
Date of order: 09.01.2025

1. Savita
2. Rajesh Kumar Verma
Both R/O: - 92, Four Story Flats, Vishal
Market, Tagore Garden Extension, New
Delhi-110027

Complainants

Versus

M/s Sepset Properties Pvt. Ltd.
Regd. Office: Room no. 205, Welcome Plaza,
S-551, School Block II, Shakarpur, Delhi-
110092

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:

In person
Shri Himanshu Singh (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

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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.No.	Particulars	Details
1.	Name of the project	"Paras Dews", Sector- 106, Gurugram
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered 118 of 2017 dated 28.08.2017
4.	DTPC License no.	61 of 2012 dated 13.06.2012
	Validity status	12.06.2020
	Name of licensee	Sepset Properties
	Licensed area	13.76 acre
5.	Unit no.	12, floor-05, tower-E (page 51 of complaint)
6.	Unit admeasuring	1385 sq. ft. (super area) (page 51 of complaint)
7.	Allotment letter in favor of original allottee i.e. Leela Bansal	10.01.2013 (page 37 of complaint)
8.	Endorsement in favor of complainants	22.02.2013 (page 38 of complaint)
9.	Date of execution of buyer's agreement	10.05.2013 (page 48 of complaint)
10.	Tripartite Agreement b/w complainant and HDFC	05.06.2013 Page 78 of complaint)
11.	Possession clause	3. Possession <i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions. formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the</i>

		<i>Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals The commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser.</i> (Emphasis supplied).
12.	Environment clearance	06.09.2013 (taken from CR/931/2023)
13.	Due date of possession	06.09.2017 (Calculated from the date of environment clearance i.e. 06.09.2013 Grace period is allowed being unqualified)
14.	Basic Sale consideration	Rs.80,60,700/- (as per payment plan page no.77 of complaint)
15.	Total sale consideration	Rs.95,57,900/- (as per payment plan page no.77 of complaint) Rs.1,16,44,748/- (inclusive of other charges as per the SOA dated 28.04.2023 annexed with offer of possession)
16.	Total amount paid by the complainant	Rs.73,60,611/- (as per SOA dated 28.04.2023 page 99 of complaint)
17.	Occupation certificate	26.04.2023 (page 21 of reply)
18.	Offer of possession	28.04.2023 (page 97 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That in 2012, Mrs. Leela Bansal i.e. first allottee paid an amount of Rs.7,50,000/- towards booking a unit in the project being developed by the respondent named 'Paras Dew's' Sector 106, Dwarka Expressway, Gurugram, Haryana. The first allottee was allotted a unit bearing No. T-E/0512 as per the issued allotment letter. In the year 2013, the complainants showed interest in the property and consequently an endorsement form dated 22.02.2023 was executed between the first

- allottee and the complainants. After the endorsement, the complainants were substituted as the original allottees and same was duly approved by the respondent.
- II. That the respondent sent a demand letter dated 07.03.2013 to the complainants, demanding instalment that was to be paid within 60 days of booking and the complainants diligently paid the amount as and when the demands were raised by the respondent. After collecting a substantial amount the respondent executed the buyer builder agreement with the complainants.
- III. That the respondent lured the complainants to avail the loan facility from the HDFC Limited thus, believing the respondent and for the ease of timely payment the complainants herein availed the loan of Rs.64,50,000/- from the HDFC Limited. Thereafter, a tripartite agreement was also executed between the complainants, respondent and the HDFC Limited, enumerating the terms of the loan availed for the unit by the complainants.
- IV. That the complainants not only complied with the abovementioned demand but several other demands from the year 2013 till the year 2017. The complainants were shocked to find that various terms of the agreement are unilateral, arbitrary and one-sided. As, per Clause 12.3 of the agreement, on delay in making the instalment payment towards the consideration of the unit, the complainants were liable to pay an exorbitant interest @18% per annum, meanwhile reserving the indefensible rights with itself to change the rate of interest anytime. However, upon the delay in providing possession of the unit, the respondent was supposed to pay to the complainant a meagre interest of Rs 5/- per square feet per month. The complainants were not left with an option to negotiate any of the one-sided and arbitrary terms and conditions as any disagreement thereof would

have led to the cancellation of the unit and forfeiture of the non-refundable amounts paid by the complainants along with earnest money.

- V. That as per Clause 3 (i), the possession of the unit was promised to be offered within 42 months from the date of execution of agreement along with an additional grace period of 6 months. Thus, the possession of the unit was promised to be offered to the complainants latest by 10.05.2017.
- VI. That the complainants duly complied with the demands as and when raised by the respondent since there was an apparent delay on the part of the respondent in providing the possession of the unit and further, the respondent kept on demanding payments from the complainants but miserably failed in providing regular updates qua the construction of the project. therefore, in the said premise, the complainants were constrained to not pay any further payments to the respondent without any construction updates from the respondent.
- VII. That the respondent issued to the complainants the payment demands that were to be paid on achieving of each linked construction milestone as per the construction linked payment plan that is annexed to the agreement. The complainants complied to various payment demands as and when demanded by the respondent on the pretext that the milestone has been achieved. Meanwhile, the complainants requested the respondent time and again to share the construction updates against which the demands were raised and inquired about the expected time of delivering the possession. However, as the complainants did not get a clear response, they visited the project site, the complainants there were shocked and felt cheated as the complainants were made to pay the demands against various construction milestone despite any actual progress in the construction as mentioned in payment plan. Thereafter, the complainants constantly tried seeking updates related to construction and the possession but the only response

the complainants received was that the unit will be constructed as early as possible without any pictures, videos, or documents indicating any progress. Consequently, complainants made various attempts via telephonic follow ups and email correspondence with the respondent for waiver of the interest on delayed payments as the possession of the unit on the promised date was apparently a far-fetched commitment by the respondent. On 18.01.2017, respondent agreed to waive off the whole interest amount and shared an interest waiver sheet for the same through an email to the complainants.

VIII. That the respondent had collected an amount of Rs.73,60,611/- against consideration of the unit from the complainants out of the total sale consideration of Rs.1,16,44,748/-. However, the respondent failed to offer possession of the unit to the complainants within the time period stipulated in the agreement and the possession was delayed by more than 5 years and 9 months approximately. The complainants relentlessly chased the respondent seeking a tentative date by when possession of the unit would be offered but every time incorrect and misleading information was provided. After half a decade, on 28.04.2023, the respondent sent a letter of possession intimating the complainants that they have received the occupation certificate for the Tower E and F of the project. However, to the utter shock of the complainants despite a delay of more than half a decade, the respondent has again levied an illegitimate interest on delayed payments of Rs.13,79,702/-. Furthermore, the complainants were also informed that if the possession is not accepted along with the settled accounts within a period of 30 days from the receipt of this letter of possession, then in that case, holding charges will be levied. The complainants again followed the same chase to get the waiver of the unjustified interest as there was a delay in construction at every milestone

ultimately resulting in a delay of more than half a decade to offer the possession of the unit.

- IX. That despite the inordinate delay of more than 5 years and 9 months from the promised date of possession as per the agreement, the respondent has failed to pay any amount towards delay compensation to the complainants. As per Clause 3.3 of the agreement, the respondent is obligated to compensate the complainants for the delay in providing possession of the unit merely at Rs. 5/- per sq. ft. per month. Over and above that the respondent has levied exorbitant compoundable interest @ 18% per annum for delay in making payment to the respondent even during the time of delayed possession as per clause 12.1 and 12.3 of the agreement. That despite the failure from the end of the respondent to offer appropriate delay compensation to the complainants for the delayed possession till date, they have managed to impose the arbitrary clause of the agreement by levying an exorbitant interest for the delayed period on the complainant. The respondent had repeatedly avoided to address the issues raised by the complainants with respect to the unfair exorbitant interest charged on delayed payments.
- X. That none of the circumstances that have resulted in this inordinate delay, were and are, beyond the control of the respondent. The complainants feel cheated because it is apparent that the promises made by the respondent were nothing but false and dishonest.
- XI. That the complainants became the allottees of this unit in the project in the year 2012 and since then they have eagerly awaited possession of their unit. Therefore, despite the inordinate delay that has been caused by the respondent, the complainants seek appropriate compensation for the period of delay caused by the respondent and waiver of interest on delayed payment by the complainants for this delayed period of possession.

C. Relief sought by the complainant:

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

- I. Direct the respondent to pay delay possession charges and handover the possession.
- II. Direct the respondent to waive complete amount of interest levied for delay in making payments.
- III. Direct the respondent to pay litigation cost.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

- i. That the complaint is not maintainable and is premature also infructuous as the respondent had already obtained the occupancy certificate for tower E of the project on 28.04.2023 where the unit of complainant is situated.
- ii. That there is no delay on part of the respondent since it admittedly the complainant who has defaulted in payment of instalments as per the agreed payment plan.
- iii. That in terms of the buyer's agreement dated 10.05.2013 the complainant was allotted unit bearing no. 0512, 5th floor, in tower E having super area admeasuring 1385 sq. ft., for a total sale consideration of Rs.1,16,44,748/-. The complainants have opted for construction linked payment plan.
- iv. That the possession of the subject unit was to be handed over to the complainants in terms of clauses 3.1 and 3.2 of the builder buyer agreement dated 10.05.2013 which clearly provide that subject to the complainant complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due. The respondent proposed to offer the possession of the unit within a period of 51 months (42 month + grace period of 6 month plus 90 days) of the date of execution of the apartment buyer's agreement or date of obtaining all

licences or approvals for commencement of construction, whichever is later, subject to force majeure. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.

- v. That the present complaint is not maintainable since not only the complainant in breach of the builder buyer agreement, and also in violation of Real Estate Regulation Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 has filed this complaint. Section 19 lays down the rights and duties of the allottees and sub-clause (6) of Section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. The complainants have breached all these provisions by making a huge delay in making the payments as per the time specified in the agreement.
- vi. That as per section 19(10) of the Real Estate Regulation Act, 2016, the respondent - promoter has obtained the occupation certificate on 26.04.2023 and have further offered the possession vide letter dated 28.04.2023. Thereafter, the allottee is duty bound to take possession. Herein, the complainant has failed to take possession of the allotted unit as well as making the payment of outstanding dues.
- vii. That the respondent has suffered due to the breaches committed by the complainants since the said respondent has continued with the construction of the apartment despite the complainants not paying the complete consideration. Due to the failure of the complainants in paying the complete consideration, the respondent has suffered immense monetary hardship.
- viii. That the Hon'ble Supreme Court, through an order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi-NCR region, affecting the respondent's project which led to a significant reduction in construction activity for a considerable period. Similar stay orders were also

issued in the preceding years, 2017-2018 and 2018-2019, resulting in long-term halts in construction activities. The pandemic of Covid-19 also had devastating effect on the worldwide economy, particularly on the industrial sector, including the real estate sector, which is heavily dependent on its labour force. Government-imposed lockdowns resulted in a complete stoppage of all construction activities in the NCR area until July 2020. The labour force employed by the respondent was forced to return to their hometowns, leading to a severe shortage of labour. The respondent has been unable to employ the necessary labour for the completion of the project.

- ix. That unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent were forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects.
- x. That once the parties have duly contracted and locked their legal obligations by way of the buyer's agreement, no relief over and above the clause of the agreement can be granted to the complainant. The buyer's agreement duly provides that for any period of delay beyond the contracted date of offer of possession, subject to force majeure clause.
- xi. That in the present complaint the complainants have not been able to point out a single provision of either the Real Estate (Regulation and

Development) Act, 2016 or the Haryana Real Estate (Regulation and Development) Rules, 2017 which has been violated by the Respondent. Thus, this complaint is not entitled to any relief at all.

7. All other averments made in the complaint were denied in toto.
8. 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 submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

10. 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

11. 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.

12. 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 objections raised by the respondent

F.I Objection regarding the force majeure.

13. The respondent-promoter raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 10.05.2013 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 06.09.2017 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

14. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton*

Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. In the present complaint, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 06.09.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding delay in payments by the complainants.

16. The respondent-promoter contended that the complainants had delayed making payments as per the timeline specified in the agreement. In this regard, Section 19(6) of the Act, 2016, imposes an obligation on the allottee to make timely payments. In the event of default by the allottees, the promoter is entitled to charge interest at the prescribed rate of 11.10%. which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

G. Relief sought by the complainants.

G.I Direct the respondent to pay delay possession charges and handover the possession.

17. That an allotment letter dated 10.01.2013 was issued in the name of former allottee i.e. Mrs. Leela Bansal for the unit no. 12, tower-E, 5th floor Further, the

said allotment was endorsed in the name of the complainants vide endorsement letter dated 22.02.2013. Thereafter, a builder buyer agreement dated 10.05.2012 was executed between the respondent and complainants for the subject unit for an agreed basic sale consideration of Rs.80,60,700/- against which complainants paid an amount of Rs.73,60,611/- and the respondent has failed to hand over the physical possession till date. The complainants intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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."

(Emphasis supplied)

18. Clause 3.1 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

"3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals. The commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser....."

(Emphasis supplied)

19. 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, *ibid*. Rule 15 has been reproduced as under:

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

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

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

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all the cases.

21. 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., 09.01.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

22. 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—

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 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;”

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. 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 buyer’s agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (10.05.2013) or date of obtaining all license or approvals for commencement of construction, whichever is later. The builder buyer agreement was executed between the parties on 10.05.2013 whereas the environmental clearance certificate was obtained by the respondent on 06.09.2013. Therefore, the date of environmental clearance being later, the due date of possession was calculated from the date of environmental clearance. Accordingly, the due date of possession comes out to be 06.09.2017. Occupation certificate was granted by the concerned authority on 26.04.2023 and thereafter, the possession of the subject unit was offered to the complainants on 28.04.2023. 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 unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as

per the buyer's agreement dated 10.05.2013 to hand over the possession within the stipulated period.

25. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 26.04.2023. The respondent offered the possession of the unit in question to the complainants only on 28.04.2023, 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 month 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 (28.04.2023) which comes out to be 28.06.2023.

26. Further, as per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 2 months. Also, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

G.II Direct the respondent to waive complete amount of interest levied for delay in making payments.

27. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

G.III Direct the respondent to pay litigation cost.

28. The complainant is seeking relief w.r.t litigation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra* held that an allottee is entitled to claim compensation 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 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.

H.Directions of the Authority

29. 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 interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the due date of possession, i.e., 06.09.2017 till the date of offer of possession (28.04.2023) plus two months i.e., 28.06.2023, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- 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., 11.10% by the

respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

IV. The respondent is directed to handover the physical possession of the allotted unit to the complainants complete in all aspects of buyer's agreement.

V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dated: 09.01.2025

HARERA
GURUGRAM

V.I

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram