

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

**Complaint no.:** 4303 of 2023  
**Date of filing:** 18.09.2023  
**Date of decision:** 10.01.2025

Mrs Alka Mukherjee

R/O: - C-1/1037, Vasant Kunj, New Delhi-110070

**Complainant**

**Versus**

M/s Burman GSC Estate Pvt. Ltd  
Regd. Office at: - B-1/e-24, Mohan Co-Operative  
Industrial Area, Mathura Road, New Delhi-110044

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Shri Harshit Batra  
Shri Vinayak Gupta

Counsel for the Complainant  
Counsel for the Respondent

**ORDER**

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

S.No.	Particulars	Details
1.	Name and location of the project	The Spectrum, Sector 82A, Gurugram
2.	Project area	4.4 ACRES
3.	Nature of the project	Serviced Apartment Building
4.	DTCP license no. and validity status	135 of 2008 dated 28.06.2008 valid up to 27.06.2025
5.	Name of the Licensee	Dr Fresh Real Estate ventures Pvt. Ltd
6.	RERA registered/ not registered and validity status	222 of 2017 dated 18.09.2017 valid up to 30.06.2020
7.	BBA	24.11.2016 (pg. 31 of complaint)
8.	Unit No.	709, 7 <sup>th</sup> floor (pg. 32 of complaint)
9.	Unit Area admeasuring	663 sq. ft. (pg. 32 of complaint)
10.	Possession Clause	<b>13.4 Schedule for Possession</b> <i>The developer proposes to offer possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of agreement. The allottee further agrees an understands that the developer shall additionally be entitled to a period of 180 days (grace period) after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the developer.</i> (pg. 15 of agreement)
11.	Due date of possession	20.08.2021 (Calculated from the date of execution of agreement plus grace period of 180 days + 6 months on account of Covid)

12.	Basic consideration	₹ 62,98,500/- (As per agreement at page 39 of complaint)
13.	Total amount paid by the complainant	₹ 76,57,976/- (As alleged by complainant at page 10 and 21 of complaint)
14.	Request of refund by the complainant	Vide emails dated 25.07.2023 and 01.08.2023
15.	OC	19.11.2024 (As stated by the respondent and as per the dtcp website)
16.	Offer of possession	19.11.2024 (As per the written submissions filed by the respondent)

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- a) That the unit in question was initially booked and allotted in the joint names of Ms. Alka Mukherjee (the present complainant) as well as her husband Mr. Jaideep Mukherjee, however, on 26.09.2018, the complainant requested the deletion of the name of the co-allottee namely Mr. Jaideep Mukherjee and to record the said unit in the sole name of Ms. Alka Mukherjee (the first allottee and the present complainant). The said application was made to the respondent on 26.09.2018 along with affidavits for name deletion of the co-allottee as well as no objections certificates of both the allottees and all other formalities, which application was duly accepted by the respondent and the respondent duly issued letter dated 25.10.2018 thereby recording all the rights and interest in the unit in the sole name of the complainant and all the rights, title and interest in the said unit stood substituted/recorded solely in the name of the present complainant i.e., Ms. Alka Mukherjee.

- b) That relying on the representations, warranties, and assurances of the respondent and its directors, officials etc. that the respondent is a reputed developer and that it has the requisite skills and resources to execute, implement, develop, construct and complete the project in a timely and orderly manner within the committed and agreed timelines and also to further pool the various units in the project for effective and efficient leasing thereof so as to benefit the respective allottee, the complainant booked a unit no. 714 on the 7<sup>th</sup> floor in serviced apartment block named as "The Spectrum" admeasuring 663 sq. ft. super area in the real estate development of the respondent, known under the name of "Gurgaon Spectrum Centre" at Sector 82 A, Gurugram, Haryana and a booking amount of Rs. 3,00,000/- was duly paid along with the application. The said unit was jointly allotted to the allottees (Mrs. Alka Mukherjee and Mr. Jaideep Mukherjee) vide an allotment letter No. GSC-165 dated 05.11.2015, where, it was maintained that the cost of the unit will be Rs. 70,96,850/-.
- c) That the respondent, along with the letter of allotment dated 05.11.2015, sent the 2nd demand letter dated 05.11.2015 for a sum of Rs. 7,22,191/- under the second payment milestone. The complainant duly paid the said sum of Rs. 7,22,191/- vide two cheques both dated 16.11.2015 bearing cheque nos. 366350 and 051647, drawn on AXIS BANK and in total aggregating to Rs. 7,22,191/-.
- d) That on 28.12.2015, the unit as allotted to the complainant and her husband was changed by the respondent from unit no. 714 to unit no. 709 admeasuring 663 Sq. ft. in the project vide unit change letter bearing reference number GSC165 dated 28.12.2015. The respondent again on 22.09.2016 sent a demand letter to the complainant demanding a further sum of Rs. 6,58,193/- The complainant, being innocent law-abiding citizen,

paid the said amount to the respondent vide RTGS on 31.10.2016. Without even executing the builder buyer agreement, respondent had already demanded more than 10% of the total sale consideration of the said unit from the complainant which is a gross violation of the Section 13(1) of the Act which explicitly states that no builder shall be allowed to accept a sum more than ten percent of the total sale consideration of the apartment, plot or building as the case may be. Even before the execution of the builder buyer agreement. The complainant had paid a sum of Rs. 16,80,384/- as per the demands raised by the respondent from time to time.

- e) That the respondent, after the letter of allotment dated 05.11.2015 and after a substantial delay of almost 7 (seven) months, sent a pre-printed builder buyer agreement, which the complainant was reluctant to sign, as the agreement contained many arbitrary and one sided clauses to suit to the convenience of the respondent. However, the complainant and her husband after investing their hard-earned money and in apprehension of losing their already paid consideration against the total consideration, were coerced to sign the agreement on dotted lines with no option and opportunity to negotiate the terms and conditions and thus, she and her husband (who at that time was a co-allottee) signed the builder buyer agreement on 24.11.2016.
- f) That the complainant, trusting the words and promises of the respondent and its senior management, diligently kept on paying the demands raised from time to time by the respondent in the hope that the said payments from the hard-earned incomes of her and her husband are going towards the timely delivery of the said unit. However, all the promises, assurances and undertakings of the respondent turned out to be false, misleading, and untrue.

- g) That the builder buyer agreement was signed between the parties on 24.11.2016, the due date for offer of possession, as computed from the said date of execution of the builder buyer agreement comes out to be 20.02.2021. The respondent has evidently delayed the offer of possession as per the committed period / time schedules by over 2 years as is evident from the fact that till date, the development of the project has not been completed, the occupation certificate and completion certificate thereof have not been received and the valid and legal offer of possession has not been offered to the complainant.
- h) That it is a matter of fact and record that on and before the due date as mentioned above, no part completion/ completion certificate was obtained by the respondent and in fact, till date, the respondent has made no communication of procurement of the same. Even after almost 8 years of the booking of the unit, it has not been completed and possession of the said unit has not been offered to the complainant. The RERA Registration of the said project was valid till 30.06.2020, which stands expired as on date and has not been renewed till date thereby also leading to a violation of Section 4(2)(l)(c) and Section 6 of the Act.
- i) That the complainant tried to contact the respondent time and again to seek clarifications about the stage-wise construction and completion of the project and the respondent through its email dated 31.10.2018 ensured that the finishing of the unit and the handover shall be made by first week of August 2019, however, only false promises were made by the respondent and event till date, no offer of possession has been made. Contrary to its representations and warranties, the respondent through its email dated 05.04.2019 issued demand letter for the milestone payable at on commencement of top floor slab. At the same time and despite the fact that the Respondent stood in material breach of the agreement and its

representations, threats of imposing interest in case of non-payment were also levied. Thereafter, even after 10 months, the respondent could only allegedly reach the stage of commencement of flooring, as evident from the email dated 20.02.2020.

- j) That looking at the snail pace with which the construction was being carried on and the material breach of the representations and warranties by the respondent, the complainant sought refund of the amount paid along with interest, vide emails dated 25.07.2023 and 01.08.2023, however, the respondent did not act upon the request of the complainant till date.
- k) That in light of the mala fide conduct of the respondent and delay in offering the possession of the said unit, the respondent is clearly liable to refund the entire amount paid by the complainant along with interest from the date of payment, as per the provisions of the Act. It is the failure of the respondent promoter to fulfil its obligations, and responsibilities as per the agreement dated 24.11.2016 that had led to the non-compliance of the mandate contained in Section 11 [4] (a) read with Section 18(1) of the Act.

### **C. Relief sought by the complainant.**

4. The complainant has sought following relief:
- i. Direct the respondent to refund the entire amount paid by the complainant along with the prescribed rate of interest from the respective date of payment till its realization.
  - ii. Direct the respondent to not to create third party rights till the complete refund with interest is made by the respondent.
  - iii. To initiate the proceedings against the respondent for violating section 4(2)(I)(c) and section 6 punishable under section 60 and 61 of the Act.
  - iv. To grant leave to the complainant to approach the Ld. Adjudicating Officer u/s 71 and 72 read with section 31 of the Act for various

violations of the agreement and the act.

**D. Reply by the respondent.**

5. The respondent contested the complaint on the following grounds:-

- a) That the complainant made several visits to the office of the respondent to know about the details of the project titled as "The Spectrum", located at Sector 82-A, Gurugram, Haryana. The complainant booked a unit by paying the requisite booking amount of Rs. 3,00,000/- in the project of the respondent subject to the payment plan as accepted there under in the application form.
- b) That it is contended to note that the respondent being in a position of developer did not make any false promises or had not given fake assurances to the complainant. All the terms and conditions were made crystal clear to the complainant at the time of booking and the application form therein and also at the time of execution of builder buyers agreement. That the complainant proceeded with the builder buyers agreement will-fully agreeing to the same without any objections whatsoever.
- c) That the project was delayed due to the reasons that the Hon'ble National Green Tribunal(NGT) had passed orders governing the entry and exit of vehicles in NCR region and the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for the last couple of years at the time of change in weather in November every year. The delay in completion of project is mainly on account of orders of the National Green Tribunal (NGT) for banning construction activities at project site. The said orders were passed by the NGT from time to time due to unforeseen rise in pollution and high risk in air quality index. The re-mobilization of resources and commencing works in full swing after lifting of the ban is a



slow process and therefore the overall impact of the ban was much extensive as compared to the actual ban. The contractor of respondent could not undertake construction for approximately 2-3 months every year, in compliance of the orders of Hon'ble National Green Tribunal. There were frequent disturbances and disruptions in completion of construction activity at the spot causing delays which were unforeseen and absolutely beyond the power and control of the respondent. The details of the ban on construction and the number of days affected due to the same are enumerated herein below:-

Sr. No.	Year	Start Date	End Date	No. of Days	Remarks
1	2018	01/11/2018	10/11/2018	9	Complete Ban
2	2019	01/11/2019	09/12/2019	38	Complete Ban
3	2019	09/12/2019	14/02/2020	67	Partial Ban
4	2020	Loss in productivity of manpower output. 90			
5	2020	COVID-19-Delay in procurement of Kitchen equipment package, loose furniture. 116			

Validity of Registration Certificate=30.12.2020

Impact of NGT Ban & Covid-19 from date of registration until February 2020 = 320 days

- d) That further the impact of lockdown to curb the spread of Novel Corona Virus (Covid 19) leading to a complete halt in all activities except essential services has led to substantial delays in re-mobilization of manpower followed by adherence of MHA guidelines that has led to loss of productivity in manpower outputs to complete the works at site. Though we have ensured fastracking the activities by targeting the completion of parallel work front and procurement of sourced items at site, few critical path activities have been delayed on the account of compliance of MHA

guidelines to control the spread of Covid-19 in 2020 followed by Omicron in the year 2021 and the same is unforeseen delay beyond the control of the developer. Due to spread of Covid-19 and Omicron the Hon'ble Apex Court have extended all kinds of limitations from 15.03.2020 till 28.02.2022.

- e) That the developer committed to handover timely possession and hence after the aforesaid difficulties the construction of the project has been completed in February 2023, the aforesaid fact of completion of work can be verified with the spot inspection. Promptly after completion of project, the developer/respondent had applied for the grant of occupation certificate but the same application has been returned in original by the DGTCP, by stating the reason that the company shall apply for change in name of company under the beneficial policy dated 18.02.2015 or after the decision of Hon'ble High Court in CWP No. 9586 of 2021 titled as Burman Estate Pvt. Ltd. Vs. State of Haryana. The respondent/developer was and still committed to give possession of the allotted unit within prescribed time but the unforeseen delay has been caused due to reasons stated above, which are beyond the power and control of the respondent/developer.
- f) That the respondent/developer has already spent erroneous amount of money towards the due construction and development of the project of which occupation certificate was already applied but has been returned due to reason stated above. The respondent has filed their reply against show cause notice dated 02.04.2021 to The Director, Town and Country Planning, Department Haryana in pursuant to order dated 10.10.2023 passed by the Hon'ble Punjab and Haryana High Court, Chandigarh on which hearing has been conducted on dated 02.02.2024 and the order of DGTCP is awaiting. After decision of the aforesaid matter by the DGTCP,

the respondent is committed to apply OC again and as soon as the OC will be received, the possession will be offered as per the terms of builder buyer's agreement. The respondent spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) and have duly performed their obligations & have been unable to realize the proceeds of the said project from the complainant and the legitimate dues of the respondent/developers for no just and valid cause have been withheld by the allottees. That on account of such breaches, delays and defaults of the allottees it is the respondent/developers who are entitled to claim compensation from the allottees including complainant.

- g) That the occupation certificate has been duly issued by the department of Town and Country Planning, Chandigarh, Haryana vide Memo No. ZP-464-Vol.-II/PA(DK)/2024/34907 dated 19.11.2024 and promptly after obtaining the occupation certificate, the developer has duly offered the possession of the said unit no. 709 to the complainant vide offer of possession dated 19.11.2024 duly send to the complainant via email dated 20.11.2024 and registered post also.
- h) Written submissions have been filed by the respondent and the same has been taken on record and perused further.

**E. Written submission by complainant**

6. Written submissions have been filed by the complainant and the same has been taken on record and perused further. The complainant in written submission has submitted as under:-
7. That the respondent in its written arguments alleged to have received the occupation certificate on 19.11.2024 and has attached the offer of possession letter through email dated 20.11.2024. It is important to note that till the due date no offer was made to the complainant. Further no

grace period should be allowed to the respondent. The respondent had not completed construction of the project even by February, 2023 and as per application dated 17.02.2023 submitted by the respondent itself to DGTCP on 21.02.2023 for grant of part occupation certificate, it becomes clear that the project was not complete and, therefore, only part occupation certificate had been applied for. The respondent had very cunningly not annexed the copy of the application for part occupation certificate.

8. All other averments made in the complaint were denied in toto.
9. 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 submission made by the parties.

**F. Jurisdiction of the authority**

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F. I Territorial jurisdiction**

11. As per notification no. 1/92/2017-ITCP 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.

**F. II Subject-matter jurisdiction**

12. 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.*

13. 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 complainants at a later stage.
14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** " SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of ***M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)***, the authority has the jurisdiction

to entertain a complaint seeking refund of the amount and interest on the refund amount.

### **G. Finding on objection raised by the respondent**

#### **G.I. Objection regarding the force majeure.**

16. The respondent-promoter raised the contention that due to the notification by the NGT with regard to banning of construction, phasing out the 10 year old diesel vehicles from NCR , the entry and exit of vehicles in NCR region Covid- 19. Several other allottees were in default of the agreed payment plan, and the non-payment of instalments delayed the construction of the entire project.
17. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 24.11.2016. The grace period is unqualified and does not prescribe any preconditions for the grant of grace period of 180 days. The said period of 180 days is allowed to the promoter for the exigencies beyond the control of the promoter. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 20.08.2021.

### **H. Findings on the relief sought by the complainant**

**H.I Direct the respondent to refund the entire amount paid by the complainant along with the prescribed rate of interest from the respective date of payment till its realization.**

18. The complainant booked a unit no. 714 on 7<sup>th</sup> floor admeasuring 663 sq. ft. in the respondent's project namely "The spectrum", Sector 82-A, Gurugram, Haryana and an allotment letter dated 05.11.2015 was issued by respondent for an agreed sale consideration of Rs.62,98,500/- against which complainant has paid an amount of Rs. 76,57,976/-.The respondent sent a letter on 28.12.2015 stating that the unit number assigned to the

complainant was changed from 714 to 709. The complainant received the letter but raised no objection to the change in the unit number. Afterwards, the builder buyer agreement was executed between the parties on 24.11.2016 in respect of unit no. 709 and the respondent has failed to hand over the physical possession of the subject unit in terms of the BBA . Consequently, the complainant made request for refund of the entire amount vide emails dated 25.07.2023 and 01.08.2023.

19. The complainant intends to withdraw from the project and is seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) 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, —*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*  
*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act;*

*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)**

20. As per clause 13.4 of the agreement provides for handing over of possession and is reproduced below:

*The developer proposes to offer possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of agreement. The allottee further agrees and understands that the developer shall additionally be entitled to a period of 180 days (grace period) after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the developer.*

21. On consideration of the abovementioned clause, 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 13.4 of the agreement dated 24.11.2016, the possession of the subject unit was to be delivered within a period of 45 months with an additional grace period of 180 days from the date of execution of the buyer's agreement plus 6 months of Covid-19. Accordingly, the due date of possession comes out to be 20.08.2021.
22. The occupation certificate/part occupation certificate of the buildings /towers where allotted unit of the complainant is situated, was received after filing of complaint by the complainant for return of the amount received by the promoter. Further, vide written arguments filed by the respondent, it is written that that occupation certificate has been obtained on 19.11.2024 from the competent authority and thereafter offer of possession was made on 19.11.2024 vide email dated 20.11.2024.
23. So, keeping in view the aforesaid facts, the authority observes that the complainant has demanded refund of the amount paid by him along with interest even prior to the date of receipt of OC/CC from the competent authority. However, the respondent has not acted upon the request of the complainant and despite demand by the allottee to return the amount paid by him, the respondent till date has not refunded the amount paid by the allottee along with interest. Section 18 of the Act of 2016 confers an unconditional absolute right upon an allottee to get refund of the amount deposited with the promoter and interest at the prescribed rate, if the promoter fails to complete or is unable to give possession of an apartment as per the date specified in the buyer's agreement as held by Hon'ble Apex Court in *M/s Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (SCC Online SC 1044; decided on 11.11.2021)*.



24. Furthermore, the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan 2019(2) R.C.R. (Civil) 738**, has held that the flat purchaser cannot be compelled to take possession of the flat even though it was offered almost 2 years after the grace period under the agreement expired. The relevant para is reproduced as under:

*"We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant - Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent - Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent - Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent - Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent - Flat Purchaser was entitled to be granted the relief prayed for i.e., refund of the entire amount deposited by him with Interest."*

25. **Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund amount at the prescribed rate of interest on the amount already paid by her in respect of the subject unit with interest at prescribed rate as provided 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.*

26. 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.
27. 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., 10.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee 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 allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
29. The authority hereby directs the respondent promoter to return the amount deposited by the complainant along with interest at the rate of 11.10%p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization within the timelines provided in rule 16 of the Rules 2017 *ibid*.

**H.II Direct the respondent to not to create third party rights till the complete refund with interest is made by the respondent.**

30. The respondent is directed to not to create third party rights till the realization of the payment is made to the complainant in terms of the present order.

**H.III To initiate the proceedings against the respondent for violating section 4(2)(I)(c ) and section 6 punishable under section 60 and 61 of the Act.**

31. The complainant has stated that the registration of the project expired on 30.06.2020 and has not been renewed till date. In this regard, the planning branch of the Authority is directed to take necessary actions against the respondent for not applying for extension of registration/ non submission of CC/ OC. A copy of this order be endorsed to the planning branch of the Authority for further action in the matter.

**H.IV To grant leave to the complainant to approach the Ld. Adjudicating Officer u/s 71 and 72 read with section 31 of the Act for various violations of the agreement and the Act.**

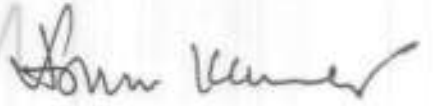
32. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation and 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation only.

**I. 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):

- I. The respondent/promoter is directed to refund the amount deposited by the complainant along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till its realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
  - II. The respondent is directed to not create third party rights till the realization of the payment is made to the complainant.
  - III. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
34. The planning branch of the Authority is directed to take necessary actions against the respondent for not applying for extension of registration/ non submission of CC/ OC. A copy of this order be endorsed to the planning branch of the Authority for further action in the matter.
35. Complaint stands disposed of.
36. File be consigned to registry.

Dated: 10.01.2025



**Arun Kumar**  
(Chairman)  
Haryana Real Estate  
Regulatory Authority,  
Gurugram