

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

Complaint no. : 6042 of 2022  
Date of filing complaint: 07.09.2022  
Date of order: 21.02.2025

1. Eric Pradip Mall
2. Ivy Pamela Mall
3. Paritosh Eric Mall

**R/O:** Flat no. 2002, Tower 5, Windchants,  
Sector-112, Gurugram

**Complainants**

Versus

Experion Developers Private Limited  
**Office at:** 8<sup>th</sup> floor, Wing B Milestone Experion Center,  
Sector-15, Gurugram, Haryana-122001

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Tejasvi Chaudhry (Advocate)

**Complainants**

Sh. Venket Rao along with Smt. Gunjan (Advocates)

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information		
1.	Name of the project	"Windchants" Sector- 112, Gurugram		
2.	Nature of project	Group housing project		
3.	RERA registered/not registered	64 of 2017 dated 18.08.2017	73 of 2017 dated 21.08.2017	112 of 2017 dated 28.08.2017
4.	Validity status	17.08.2018	20.08.2019	27.08.2019
5.	DTCP License no.	21 of 2008 dated 08.02.2008	28 of 2012 dated 07.04.2012	
6.	Validity status	07.02.2020	06.04.2025	
7.	Building plan approved	07.06.2012 (As per project details)		
8.	Environment clearance	27.12.2012 (As per project details)		
9.	Provisional allotment letter	04.08.2012 (Page no. 30 of the complaint)		
10.	Date of execution of builder buyer's agreement between respondent and original allottee	26.12.2012 (Page No. 37 of the complaint)		
11.	Date of endorsement to allottee/complainant	12.09.2014 (Page No. 76 of the complaint)		
12.	Unit no.	2002, 20 <sup>th</sup> floor, in tower- WT-05 [page 70 of complaint]		
13.	Unit area admeasuring	4650 sq. ft. [page 70 of complaint]		
14.	Revised area	4857 sq. ft. [As per final statement of account annexed with offer of possession at page 112 of complaint]		
15.	Possession clause	<b>10. PROJECT COMPLETION PERIOD</b>		

		<p>10.1 Subject to Force Majeure, timely payment of the Total Sale consideration, and other provisions of this agreement, based upon the company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment <b>within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later</b> ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities.</p> <p style="text-align: right;">(Page 54 of complaint)</p>
16.	Due date of possession	<p>27.12.2016 (Calculated from the date of EC being later i.e., 27.12.2012) <b>Note:</b> - Grace period of 180 days is allowed</p>
17.	Total sale consideration As per customer ledger dated 13.02.2023 at page no. 165 of the reply	Rs. 3,26,57,828/-
18.	Amount paid by the complainant as per customer ledger dated 13.02.2023 at page no. 165 of the reply	Rs. 3,26,57,828/-
19.	Occupation certificate	<p>24.12.2018 (Page no. 85 of the reply)</p>
20.	Offer of possession	<p>27.12.2018 (Page no. 111 of the complaint)</p>
21.	Possession handover letter	<p>14.03.2019 (Page no. 117 of the complaint) [inadvertently mentioned as 19.03.2019 in proceeding dated 18.10.2024]</p>
22.	Conveyance deed	14.03.2019

		(Page no. 96 of the complaint)
23.	Respondent has paid compensation on account of DPC to the complainant	Rs. 7,77,120/-

**B. Facts of the complaints:**

3. The complainants have made the following submissions in the complaint:-
- I. That after the project was floated, Mr. Balendu Shekar Mishra, Mr. Pawan Handa & Ms. Aarti Uppal booked the unit bearing no. WT-05/2002 at Experion Windchants, Sector 112, Dwarka Expy, Block T, New Palam Vihar Phase 2, Raghopur, Gurugram, Haryana 122017 admeasuring 4650 sq. ft. for a total sale consideration of Rs. 3,00,56,116/-. The provisional allotment letter was issued on 04.08.2012 in their favour. The apartment buyer agreement was also executed between the respondent and erstwhile owners on 20.12.2012.
  - II. That the complainants subsequently purchased the apartment from the erstwhile owners. The sale deed was executed in favour of Mr. Eric Pardip Mall, Mrs. Ivy Pamela Mall and Mr. Paritosh Eric Mall on 11.08.2014.
  - III. That the complainants collectively took a loan of Rs. 2,13,00,000/- from HDFC Bank approved on 20.06.2014. A tripartite agreement was entered into between HDFC bank, respondent and the complainants herein on 23.08.2014.
  - IV. That as per clause 10 of the apartment buyer agreement, the possession was supposed to be handed over within period of 42 months from the date of approval of building plan or the date of receipt of the approval of Ministry of Environment and Forests, Government of India or execution of the buyer agreement, whichever is later. The builder was also given a 'grace period' of 180 days from the expiry of the aforementioned period of 42 months to provide for 'unforeseen and unplanned project realities'. The

buyer agreement was entered into on 26.12.2012 and the environmental clearance was given to the respondent on 27.12.2012. The due date for calculation has to be calculated from the date of issuance of the environmental clearance. The same comes to be 27.06.2016.

- V. That till the proposed date of possession, the complainants herein had paid an amount of Rs. 2,76,62,750/- in total. Since the complainants had invested their life saving and had further also taken a loan from HDFC Bank for the living in their dream home, they regularly corresponded with the representatives of the respondent requesting them to allow them to visit the project site. Complainant no. 1 contacted the representatives via emails dated 10.12.2017, 12.07.2017, 14.09.2017, 23.09.2017, and 08.12.2017. Vide Email dated 12.07.2017, the complainant specifically requested to visit tower 5 but the request was completely ignored by the respondent.
- VI. That the complainants were paying their equated monthly instalment (EMI) for the loan availed by them to pay the respondent, however, had no information as to when their apartment would be delivered.
- VII. That the complainant was informed on 27.04.2017 via notice that there was an increase in the size of the apartment by 207 sq. ft. The apartment buyer agreement provided for size of 4650 sq. ft. whereas the actual size of the completed apartment was 4857 sq. ft. On 04.10.2017, the complainant was asked to compensate the respondent by Rs. 12,78,748/- for increase in size. Along with the demand, the complainant was warned that if the payment is not made at the earliest, interest would be levied on delayed payments.
- VIII. That again on 15.02.2018, a demand for Rs. 14,32,200/- on 'completion of doors and windows' was made. As they had already invested their life savings in the paying the respondent for the apartment, the complainants

were feeling dejected and cheated by the respondents due to the delay, however, on the assurance of the respondents that the project would be completed very soon, the complainants made a deposit of Rs. 14,19,413/- on 07.03.2018 via a demand draft on 01.03.2018. Again, the complainants did not make any delay in clearing the demand due to the high rate of interest being charged by the respondent on delayed payments and also to prevent jeopardizing the allotment itself.

- IX. That the possession was offered to the complainants on 27.12.2018. The offer of possession was delayed by 2 years and 6 months. Possession letter dated 27.12.2018, requested the complainants to clear its pending dues amounting to Rs. 48,65,642/-, which were divided as under:
- Total payable towards unit : Rs. 26,84,246/-
  - Charges towards Maintenance : Rs. 3,98,896/-
  - Stamp Duty and Legal Fees : Rs.17,82,500/-
- X. These charges were duly cleared by the complainant. The notice for possession provided for due/last date of 28.01.2019 for clearance of the charges. The notice of possession also mentioned that Rs. 7,77,120/- was credited to the account of the complainant as delayed compensation charges.
- XI. That the delayed possession charges of Rs. 7,77,120/- are grossly undervalued. The complainants were not provided any calculation according to which the sum of Rs. 7,77,120/- were arrived at by the respondents. At the point of time when the aforementioned charges were credited to the account of the complainants, they had already paid a sum of Rs. 2,76,62,749/- and over two years and six months had passed from the tentative date of possession to reside in their new apartment.

- XII. Even after duly clearing all charges raised by the complainant possession was again delayed. Despite offering possession vide letter dated 27.12.2018, the apartment was not completed and further worked upon for a period of two and a half months. It was only on 14.03.2019 that the possession was handed over and the conveyance deed executed.
- XIII. That the complainants have made a total payment of Rs. 3,31,74,570/-. The apartment buyer's agreement provides for interest at the rate of 18% at delayed payment by the purchaser, it is submitted that interest should also be provided at the rate of 18 % p.a. to the complainant.

**C. Relief sought by the complainants:**

4. The complainants have filed the present compliant for seeking following reliefs:
- Direct the respondent to pay the statutory interest, on amounts deposited by the complainants from the due date of possession till handing over the valid possession.
  - The complainants may be awarded interest at the rate of 18% per annum on the amount granted to them from the date when delayed possession became due up till they actually receive the amount.
  - The respondent may be ordered to pay for mental agony and legal costs totally amounting to Rs.1,00,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by respondent:**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:-



- i. That unit bearing no. WT/05/2002 admeasuring 4650 sq. ft. sale area in the project "Windchants" was originally allotted to Mr. Balendu Shekhar Mishra (First Applicant), Mr. Pawan Handa (Second Co Applicant) and Arti Uppal (Third Applicant) vide provisional allotment letter dated 04.08.2012. The original allottees executed the apartment buyer agreement for the said unit after carefully reading and understanding the terms and conditions contained therein on 26.12.2012. The respondent received an application on 27.08.2014 for transfer of allotment from the original allottees by way of endorsement to the complainant. Thereafter, the said unit was transferred to the complainants by way of endorsement of the ABA on 12.09.2014.
- ii. That the respondent received the occupancy certificate on 24.12.2018 and 3 days thereafter the respondent sent the notice of possession letter dated 27.12.2018. Both the parties then executed the conveyance deed on 14.03.2019 under which the complainants had purchased the residential apartment bearing no. 2002 on 20<sup>th</sup> floor in tower name/ No. WT-05 in block waving teak having sale area of 4857.00 sq. ft/451.23 sq. mtr at the Project along with all the easements, interests, privileges, rights and benefits attached thereto and exclusive right to use designated car parking space no. 1583, 1572 & 1571 in the project.
- iii. That the present complaint is liable to be dismissed solely on the ground that the complainant herein is not an allottee but is the owner of the unit therefore, has got no rights under the Act, 2016 to file the complaint before the Authority.
- iv. That the present complaint is hopelessly barred by limitation. The complainants purposely slept over their rights and have chosen to file their complaint after a gross delay just with the intention to claim





interest for an exorbitantly large period. The possession in the instant case was offered on 27.12.2018 and the conveyance deed was executed on 14.03.2019. Therefore, the cause of action, if any, accrued on 27.12.2018. However, the present complaint has been filed only 20.10.2022. There is a delay of 3 years and 10 months after possession and 3 years 7 months from execution of the conveyance deed of the concerned unit, in filing of the complaint. Thus, the complainants have slept over their rights. It is clear that the present complaint has only been filed as an afterthought without any basis and with a malafide intent on behalf of the complainants to take undue advantage at the expense of the respondent and is liable to be dismissed being an abuse of the process of law.

- v. That as the complainant has not approached the Authority within the limitation period i.e. as long a period as "3 years", now cannot plead negligence or ignorance of law for filing of the complaint. It is submitted that on account of no substantial ground but sheer "Negligence" or want of due diligence the Ld. Authority cannot show judicial generosity in accommodating such belated complaint of the complainant.
- vi. That the project of the respondent got delayed due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for brief amount of time is being reiterated herein for the sake of clarity:-
- I. **NGT Order:** The respondent stopped its development activities in compliance with the National Green Tribunal (NGT) order to stop construction in April, 2015 & November 2016 due to emission of

dust. The NGT orders simply ordered to stop the construction activities as the pollution levels were unprecedented took time of a month or so.

- II. **Demonetization of Rs.500/- and Rs.1000/- currency notes:** The Real Estate Industry is dependent on un- skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 month.
- III. **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent are situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to the neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work on the fear of riots and remobilization of work force took considerable time of 3-4 months.

- IV. **Delay by Contractor:** The respondent had awarded the works of Civil (Structure, Finishing), mechanical, electrical, hvac and external development works, including provisional sum items on design and build basis for construction of the project in question to Larsen and Toubro Limited ("L&T") vide a work agreement dated 7.2.2013 ("Work Contract"). L&T is a well-known construction company with vast expertise in executing large scale infrastructure projects. However, L&T delayed the work thereby delaying the construction milestones and sought several extensions in order to complete completion. The delays in this regard were beyond the control of the respondent. The respondent has made huge investments in the project through the funds infused by its parent company.
- V. **Delay by the Competent Authorities in granting the occupation certificate:** It is submitted that the respondent from the very beginning was committed towards the timely completion of project. That due to aforementioned force majeure situations the project got delayed. The respondent despite facing the force majeure situations, expedited and completed the construction activity at the project site through infusion of project finance of Rs.250 crores for the project, which the respondent repaid through its own resources, and applied for the occupation certificate vide application dated 09.02.2018. That the concerned authority has granted the occupation certificate on 24.12.2018. It is noteworthy to mention herein that the concerned authority has granted the occupation certificate after a delay of approximately 9 months. That the delay on part of the concerned authority in granting the occupation certificate does not amount to delay on part of the respondent. It is

clear from the aforementioned submissions that the project was delayed due to Force Majeure situations beyond the control of the respondent. It is to be noted that the representatives of the respondent duly apprised the complainant in one of their visits to project site about the difficulties being faced by the respondent in completing the construction of the project due to aforementioned force majeure situations.

7. That the respondent being a responsible developer and abiding by the terms and conditions recorded in the apartment buyer agreement, has already paid an amount of Rs. 7,77,120/- to the complainant as a compensation for delay in handing over of possession.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

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**

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

10. 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. Objections raised by the respondent:-**

### **F.I Weather the complainants can claim delayed possession charges after execution of conveyance deed.**

11. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainants against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
12. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in

a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

13. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
14. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now***

**Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020**, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

15. The authority has already taken a view in in **CR/4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

16. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant/allottee cannot be precluded from his right to seek delay possession charges from the respondent/promoter.

**F.II Whether the complaint is barred by limitation or not?**

17. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016 .However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights .Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However this shall not apply to the purpose of section 14 where specific period has already been defined.
18. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
19. In the present matter the cause of action arose on 27.12.2018 when the offer of possession was made by the respondent to the complainants. The complainants have filed the present complaint on 07.09.2022 which is 3 years 8 months and 11 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on



10.12.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

**F.III Objection regarding subsequent allottee:**

20. The authority has already taken a view in *CR/4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others*. The original allottee was allotted a unit bearing no. 2002, 20<sup>th</sup> floor admeasuring 4650 sq. ft. in project of the respondent named "windchants" at Sector-112, Gurugram vide provisional allotment letter dated 04.08.2012 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 26.12.2012. Thereafter, the original allottee sold his unit to the first subsequent allottees namely Eric Pradip Mall, Ivy Pamela Mall and Paritosh Eric Mall vide nomination letter dated 12.09.2014. The occupation certificate was received from the competent authority on 24.12.2018 and possession of the unit was offered to the first subsequent allottee vide offer of possession letter dated 27.12.2018. Accordingly, the respondent vide nomination letter dated 12.09.2014 confirming substitution of name in the aforementioned apartment and the said apartment was transferred/endorsed in the name of the complainants. Therefore, the complainants stepped into the shoes of the original allottee on 12.09.2014.
21. Further, the possession of the unit was handed over to the complainants herein vide unit handover letter dated 14.03.2019. Also, the conveyance deed dated 14.03.2019 was also executed by it in favour of the complainants in respect of the said unit. So, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the

due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

**F.III Objection regarding force majeure conditions:**

22. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT Order, Delay by the contractor, Demonetization, GST application, JAT Reservation Agitation but all the pleas advanced in this regard are devoid of merit. The subject unit was allotted to the original allottees on 04.08.2012 and as per provisions of agreement, its possession was to be offered by 27.12.2016. The due date as per possession clause comes out to be 27.12.2016.
23. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous whereas there is a delay of more than two years. Even after due date of handing over of possession. Whereas if it comes for GST, the GST was applicable from 01.07.2017 and JAT reservation was for only one or two months. Further, grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent/promoter. Thus, the promoter/respondent cannot be given any leniency on basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

- G.I Direct the respondent to pay the statutory interest, on amounts deposited by the complainants from the due date of possession till handing over the valid possession.**
- G.II The complainants may be awarded interest at the rate of 18% per annum on the amount granted to them from the date when delayed possession became due up till they actually receive the amount.**

24. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 04.08.2012 and the apartment buyer agreement was executed between the original allottee and the respondent on 26.12.2012. Thereafter the original allottee sold the subject unit to the complainants-allottees on 12.09.2014. Hence, the complainants stepped into the shoes of original allottee on 12.09.2014.
25. In the present complaint, 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. 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."*

26. Clause 10 of the buyer's agreement provides for handing over of possession and is reproduced below:

**Clause 10. PROJECT COMPLETION PERIOD**

*10.1 Subject to Force Majure, timely payment of the Total Sale consideration, and other provisions of this agreement, based upon the company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment **within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later** ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities.*

27. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter.

The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

28. **Admissibility of grace period:** As per clause 10.1 of buyer's agreement dated 26.12.2012, the respondent-promoter proposed to handover the possession of the said unit within a period of period of 42 months from the date of approval of building plans or the date of receipt of approval of environment clearance or execution of this agreement whichever is later. The date of approval of building plans is 07.06.2012 and the date of environment clearance is 27.12.2012. Therefore, the due date shall be calculated from the date of environment clearance being later. The due date of possession comes out to be 27.12.2016 by allowing grace period being unqualified and being allowed in earlier case no. 547 of 2022 and 530 of 2018.

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such

rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

30. 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.
31. 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., 21.02.2025 is @ 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
32. 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;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoters which the same is as is being granted to them in case of delayed possession charges.
34. On consideration of the documents available on record and submissions made regarding contravention of 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 10.1 of buyer's agreement executed between the parties on 26.12.2012, the possession of the subject apartment was to be delivered within a period of period of 42 months from the date of approval of building plans or the date of receipt of approval of environment clearance or execution of this agreement whichever is later. The due date of possession is calculated from the date of environment clearance plus 180 days grace period which comes out to be 27.12.2016. The respondent has offered the possession of the allotted unit on 27.12.2018 after obtaining occupation certificate from competent Authority on 24.12.2018. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties.
35. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 26.12.2012. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

36. 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 complainants are entitled to delay possession charges at rate of the prescribed interest @11.10% p.a. w.e.f. from the due date of possession 27.12.2016 till 27.02.2019 i.e., expiry of 2 months from the date of offer of possession (27.12.2018) as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.III The respondent may be ordered to pay for mental agony and legal costs totally amounting to Rs.1,00,000/-.**

37. With respect to the aforesaid relief, the counsel for the complainants are claiming compensation in the above-mentioned reliefs. 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. (Decided on 11.11.2021)**, has 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the Authority:**

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



- i. The respondent/promoter is directed to pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant(s) from the due date of possession 27.12.2016 till 27.02.2019 i.e., expiry of 2 months from the date of offer of possession (27.12.2018) as per proviso to section 18(1) of the Act read with rule 15 of the rules.
  - ii. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
  - iii. Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
  - iv. The respondent is directed to not to charge anything which is not part of the buyer's agreement.
39. Complaint stands disposed of.
40. File be consigned to the registry.

**HARERA**

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2025