

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

**Complaint no. :** 83 of 2024  
**Complaint filed on :** 16.01.2024  
**Order pronounced on:** 13.02.2025

**1. Narayan Das Sharma**

**2. Kiran Sharma**

Both R/o: A-53, 2<sup>nd</sup> Floor, Nangal, Dewat, Vasant Kunj, Delhi-70

**Complainants**

**Versus**

**M/s Bright Buildtech Pvt. Ltd.**

Regd. office: D-35, Anand Vihar, Delhi-92

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Nakul Jain (Advocate)

Shri Nitish Gupta (Advocate)

**Complainants  
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 provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project-related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

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Sr. No.	Particulars	Details
1.	Name of the project	"Woodview Residencies", Sector: 89-90, Gurugram
2.	Total area of the project	101.081 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no.	59 of 2013 dated 16.07.2013
5.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres valid up to 31.12.2020
6.	Unit no.	C-169-SF [Page 47 of complaint]
7.	Allotment letter	11.02.2015 [Page 46 of complaint]
8.	Area of the unit	1415 sq. ft. [Page 47 of complaint]
9.	Revised area of unit	1740 sq. ft. [Page 66 of complaint]
10.	Date of execution of BBA	Annexed but not executed [Page 45 of complaint]
11.	Possession clause	<b>5. Possession of Dwelling Unit</b> <i>5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavor to complete the construction of the Building Block in which the Dwelling Unit is situated within 36 months, with a grace period of 6 (six) months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the</i>

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		Dwelling Unit in the event of any default or negligence attributable to the Buyer's fulfillment of terms and conditions of this Agreement. (Emphasis supplied) [Page 51 of complaint]
12.	Due date of possession	11.08.2018 (Note: 36 months from date of allotment i.e., 11.02.2015 + 6 months grace period is allowed unconditionally)
13.	Sale consideration	Rs.1,25,43,749/- [As per payment plan annexed with allotment letter at page 43 of complaint]
14.	Revised consideration increment in area	sale after 1,19,00,000/- [Page 66 of complaint]
15.	Total amount paid by the complainant	Rs. 79,25,760/- [as per alleged by the complainants in brief facts at page 08 also admitted by respondent in its reply at page 8]
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

**B. Facts of the complaint:**

3. The complainants have made following submissions in the complaint:

- a. In the year 2014, respondent had come up with a project whereunder it was claimed by the respondent to have floated a project for the development, construction and sale of a residential plotted colony and allotment of dwelling units therein under the name and style of 'Woodview Residences' on the parcel of land situated in the revenue estate of Village Hayatpur, Tehsil Gurgaon and Village Badha, Tehsil Manesar, District Gurgaon, falling under Sector 89 and 90 under the master plan of Gurgaon.

- b. Based on the representations/assurances/promise so made by the respondent, complainants had accordingly submitted a joint application dated 13.02.2014 for allotment of an independent floor/unit in the said upcoming project. Pertinently, as per the demand of the respondent, along with the said joint application dated 13.02.2014, complainants had also deposited three (03) cheques for a cumulative amount of Rs. 10,00,000/- which were duly en-cashed by the respondent upon presentation.
- c. It is significant to mention that at the time of receiving the initial deposit of Rs. 10,00,000/-, respondent, in order to beguile and deceive the complainants, had again assured that the said upcoming project will be started soon and that the letter of allotment/intimation for a residential dwelling unit in favor of the complainants, would be issued shortly. Pertinently, based on such representations, complainants had applied and obtained residential housing finance from M/s HDFC Bank Ltd.
- d. After lapse of a year from the date of the joint application dated 13.02.2014, provisional allotment letter dated 11.02.2015 came to be issued by the respondent in favour of the complainants against their booking ref no. WRO129 for the following dwelling unit against receipt of the booking amount of Rs. 10,00,000/- (basic sale price: Rs. 9,64,245.77 and service tax: Rs. 35,754.23) out of total sale consideration of Rs. 1,25,43,749.93.
- e. Pertinently, with the said provisional allotment letter dated 11.02.2015, as aforesaid, was also annexed as annexure -A the payment plan or the payment schedule for payment of the total consideration of Rs. 1,25,43,749.93 delineating the twelve (12) stages of payment of the respective instalment(s) commencing from stage 1 / on booking and ending at stage 12 / on offer of possession.
- f. As mutually agreed, complainants regularly, timely and diligently paid the respective instalments upon receipt of the invoice/demand note issued by the respondent from time to time on the assurance and representation of the

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respondent that the said upcoming project would be completed timely, without fail.

- g. After receipt of an amount of approximately Rs. 33,00,000/-, being equivalent to 26% of the total consideration amount of Rs. 1,25,43,749.93 from the complainants, respondent, vide its communication dated 28.07.2015 bearing Ref No. WR0129 called upon the complainants to execute the buyer agreement for unit no. C-169-SF in "Woodview Residences", Sector 89 and 90, Gurgaon two sets whereof were enclosed along with the said communication.
- h. The complainants, having no other option, had to sign the said agreement notwithstanding the fact that the said buyer agreement was framed by the respondent incorporating therein various one-sided clauses constituting an unfair trade practice inasmuch as it adopted unfair methods/practices for the purpose of selling the dwelling units by the respondent.
- i. That perusal of the said buyer agreement unequivocally and unambiguously evinces *inter-alia* the following clauses to be incongruous:
- j. In terms of clause 4 read with sub clause 4.3 of the said buyer agreement, time for payment of instalments is the essence under the said agreement. Further, sub clause 4.5 stipulates that upon delay in payment of instalment by the complainants/buyer, respondent was entitled to interest at the rate of 18% p.a.
- k. Additionally, in terms of sub clauses 4.6 and 4.7 if payment of instalment remained in arrear for more than 30 (thirty) days and the complainants/buyer failed to rectify the default within 15 (fifteen) days of a written notice of default issued by the respondent, then the agreement would automatically stand cancelled, and the respondent would have the right to forfeit 10% of the basic sale price of the dwelling unit constituting as "Earnest Money" towards liquidated damages.
- l. On the other hand, as per clause 5 read with sub clause 5.1 of the said buyer agreement, respondent was contractually obligated to deliver possession of the subject unit to the complainants within 36 months with a grace period of six

- (06) months from the date of issuance of allotment letter dated 11.02.2015 and upon failure to deliver possession within the said stipulated time, complainants/buyer had no entitlement to terminate the said buyer agreement.
- m. After the end of the grace period, if the dwelling unit is not handed over by the respondent, then in terms of clause 5 read with sub clauses 5.2 and 5.5., complainants/buyer were/was entitled to miniscule "delay charges".
- n. As per clause 5 read with sub clause 5.1 of the said buyer agreement, respondent was contractually obligated to deliver possession of the subject unit to the complainants within 36 months with a grace period of six (06) months from the date of issuance of allotment letter. Ergo, it was incumbent upon the respondent to handover possession of the dwelling unit to the complainants on or before 11.02.2018, i.e., upon lapse of the 36 months period from the issuance of allotment letter dated 11.02.2015. Notably, the grace period of six (06) months lapsed on 11.08.2018.
- o. The foregoing notwithstanding, upon expiry of the grace period of six (06) months, respondent neither offered possession of the dwelling unit nor any compensation/delay charges, whatsoever, to the complainants, in spite of having received an interest free amount of Rs. 79,25,760/- equivalent to approximately 65% of the total sale consideration, until 03.10.2019 from the complainants.
- p. The transfer of the said upcoming project by the respondent including its rights and liabilities therein, vide its said communication dated 03.10.2019, was in complete contravention of Section 15 of the Real Estate (Regulation and Development) Act, 2016 which came into force w.e.f. 26.03.2016. Indubitably, neither the complainants were served with any intimation seeking their prior written consent nor any prior written consent was obtained from two third allottees. Pertinently, the said communication dated 03.10.2019 evinces that

the respondent did not even obtain any prior written consent from the RERA Authority apropos the said alleged transfer.

- q. By making false representations and assurances, respondent succeeded in inducing complainants to pay an interest free amount of Rs. 79,25,760/- (till date, constituting approximately 65% of the total sale consideration, as borne out from respondent's communication dated 27.06.2023 affirming having received an amount of Rs. 79,25,760/- while further claiming that the balance sale consideration of Rs. 39,74,240 [excluding taxes] shall be payable by the complainants at the time of offer of possession.
- r. Concomitantly, respondent served upon the complainants a fresh agreement for sale containing new rights and obligations qua the parties. Pertinently, clause 7 read with sub clause 7.1 therein *inter-alia* claims that the promoter assures to hand over possession of the dwelling unit along with parking on or before 30.06.2022. Significantly, possession of the dwelling unit has not yet been handed over to the complainants till date and have been made to run from pillar to post *inter-alia* for obtaining possession of their dwelling unit as well as for payment of the compensation for the admitted delay in handing over of possession, but to no avail.
- s. The complainants are being brow beaten into signing of the said fresh agreement for sale containing new rights and obligations notwithstanding the fact that proviso to sub section 2 of section 15 clearly stipulates that any transfer or assignment permitted under provisions of section 15 shall not result in extension of time and that the real estate project is required to be completed with all the pending obligations of the erstwhile promoter.
- t. Even otherwise, the rule of quasi retroactivity will make the provisions of RERA or the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the RERA Act and the Rules became applicable. Thus, the respondent cannot wriggle out of its obligation(s) under the said buyer agreement *inter-alia*

contained in clause 5 read with sub clause 5.1 wherein and whereby the respondent was contractually obligated to deliver possession of the subject unit to the complainants within 36 months with a grace period of six (06) months from the date of issuance of allotment letter dated 11.02.2015.

- u. In addition to the complainants being coerced into accepting the terms and conditions contained in the new/fresh agreement to sale, respondent, despite charging preferential location charges ("PLC") to the tune of Rs. 6,71,257.80 {@ 6.00% of basic selling price} in clause 3 of the said buyer agreement executed in the year 2015, basis the preferential location criteria assured and promised by the respondent such as dwelling unit shall be overlooking 24-meter-wide road, said 24-meter-wide road shall be having direct access to the main road etc., are now also arm twisting the complainants into accepting a dwelling unit not having such preferential location.
- v. Also, despite having charged fee of Rs. 1,50,000/- towards membership fees of the club house in clause 3.2 of the said buyer agreement executed in the year 2015 and having duly received installments apropos the said cost constituent in the admitted interest free amount of Rs. 79,25,760/- paid by the complainants till date towards sale consideration, the said club house has not yet been constructed.
- w. That constrained, complainants got issued legal notice dated 04.12.2023 to the respondent vide speed post thereby calling upon the respondent to pay interest towards delayed possession on the amount of Rs. 79,25,760/- (w.e.f. 11.08.2018 till the actual date of handing over the possession at the rate of State Bank of India's highest marginal cost of lending rate +2%, to confirm precise date of handing over of the said dwelling unit to the complainants, to provide details of the location of the said dwelling unit and also confirm that the said location satisfies the preferential location criteria promised and assured to the complainants, to confirm whether or not completion certificate has been obtained from the concerned authority(s) qua the said dwelling unit/tower in



question, to confirm whether or not club house has been construed and made completely operational in the said upcoming project and provide complete details apropos the *simplicitor* plots sold by the respondent in the said upcoming project.

- x. This Ld. Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint inasmuch as, as per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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 subject upcoming project is situated within the planning area of Gurugram District. Further, Section 11(4)(a) of the RERA Act, 2016 *inter-alia* prescribes that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the RERA Act, 2016 or the Rules and Regulations made thereunder or to the allottees as per the buyer seller agreement executed *inter se*.

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

4. The complainants have sought the following relief(s):
- Direct the respondent to pay interest towards delayed possession on the amount of Rs. 79,25,760/- w.e.f. 11.08.2018 till the actual date of handing over the possession with interest.
  - Declare that the alleged transfer of the said upcoming project by the respondent including its rights and liabilities therein, vide respondent's communication dated 03.10.2019, is in complete contravention of section 15 of the RERA, 2016, which came into force w.e.f. 26.03.2016.
  - Declare all acts executed/resolutions passed including those proposed to be executed both by the Respondent as well as by the purported transferee viz., M/s Ace Mega Structures Pvt Ltd, pursuant to the alleged transfer of the said upcoming project by the respondent including its rights and liabilities therein, vide respondent's communication dated 03.10.2019, as non-est.

- iv. Direct the respondent's unilateral act of attempting to rescind the buyer agreement enclosed vide respondent's communication dated 28.07.2015 bearing Ref No. WR0129 by seeking to substitute and novate the same by a fresh contract/agreement is *per se* illegal.
  - v. Direct the respondent to confirm precise date of handing over of the said dwelling unit to the complainants.
  - vi. Direct the respondent to provide details of the location of the said dwelling unit and also confirm that the said location satisfies the preferential location criteria promised and assured to the complainants such as dwelling unit is overlooking 24-meter-wide road, said 24-meter-wide road is having direct access to the main road etc.
  - vii. Direct the respondent to confirm whether or not completion certificate has been obtained from the concerned authority(s) qua the said dwelling unit/tower/project in question.
  - viii. Direct the respondent to confirm whether or not club house has been construed and made completely operational in the said upcoming project.
  - ix. Direct the respondent to provide complete details apropos the *simplicitor* plots sold by the respondent in the said upcoming project.
  - x. Direct the respondent to compensate the complainants for litigation charges @ Rs. 1,00,000/-
  - xi. Any other relief which this Hon'ble Authority deems fit and just.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

#### **D.Reply by the Respondent**

6. The respondent has made following submissions in the reply:
- a. The respondent (Bright Buildtech Pvt. Ltd.) is developing the project namely 'Woodview Residences' (now known as "ACE Palm Floors") on its share in

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- the project land measuring 101.081 acres situated at revenue estate of village Hayatpur, Sector-89 and 90, Gurugram.
- b. M/s. Ace Mega Structures Private Limited ("Ace") has been appointed as the 'Development Manager' for development, construction, sales and marketing of the project vide 'Development Management Agreement' dated 23.05.2019 with the objective of ensuring expeditious development of the project and to provide professionally proficient customer-care interaction.
- c. The role and responsibility of ACE is restricted to managing and supervising the construction and development of the said project and to ensure timely completion. The status of ACE is purely that of a service provider who shall receive a fee as consideration for providing project management and development services to the respondent.
- d. The complainant on his own free will and volition had approached the respondent for allotment of 'unit' in said project and initially submitted application form for booking the dwelling unit in the said project.
- e. Upon submission of the application form for allotment of the unit, the respondent vide letter of allotment dated 11.02.2015 had allotted to the complainant flat no. C-169, SF. The allotment letter also contained the details of the payment plan and the particulars of the Unit allotted to the complainant in the said project. The total consideration of the unit agreed was Rs. 1,25,43,749.93/-
- f. The complainant has till date paid an amount of Rs. 79,25,760/- however, still some amount is due and payable by the complainant before taking over the possession of the unit, which is ready for possession.
- g. The builder buyer agreement was executed between the parties on 09.09.2015 which contained all the terms and conditions of the allotment and possession of the unit booked by the complainant. As per the terms of the agreement, the unit of the complainant was to be completed within a

period of 36 months + 6 5 months grace from the date of execution of the builder buyer agreement.

- h. Although the period 42 months for completion of the construction had elapsed, however due to unforeseen circumstances beyond the control of the respondent, the project could not be completed on time.
- i. The respondent has bonafide reasons to state that project of the has been reasonably delayed. It is pertinent to mention here that the reasons for delay in project are stoppage of construction activities in NCR region by the orders of court, non-availability of construction material and labour, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstance which is beyond the control of the respondent.
- j. Due to the exponential increase in the cases of 'covid-19', the Central Govt. had imposed nationwide 'lockdown' w.e.f. 25.03.2020 which has been extended till 30.06.2020, resultantly, the same has caused serious impact on the economy posing difficult challenges for everyone. It is pertinent to mention that prior, to this unprecedented situation of pandemic 'covid-19', the respondent along with the development manager had been carrying out the construction of the project at full pace and was expecting to deliver the units to the buyers by the end of year 2020, however, due to the sudden outbreak of the pandemic and closure of economic activities, the respondent had to stop the construction work during the 'lockdown'.
- k. As such, amid the difficult situation of 'force majeure' the respondent is not in a position to adhere to the arbitrary demands of the complainant for payment of any interest for the period which was wasted due to the aforesaid 'force majeure' situation. However, it is submitted that the unit of the complainant has been completed and is ready for possession in all respect.
- l. Other than the above reasons, the delay in handing over the possession of the dwelling Unit/ apartment has been caused due to various reasons which

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were beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of this Hon'ble Authority:

- Non-booking of all apartments seriously affected the construction: It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth causing delay in the construction work of the project.
- Other various challenges being faced by the respondent: lack of adequate sources of finance, shortage of labour, rising manpower and material costs, approvals and procedural difficulties, there was extreme shortage of water in the region which affected the construction works, shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln, unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months, non-availability of cash-in-hand affected the availability of labours, recession in economy also resulted in availability of labour and raw materials becoming scarce, shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban

Renewal Mission (JNNURM), orders by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.

- Apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in Writ Petition (Civil) No. 13029 of 1985 titled as "M.C. Mehta-Versus-Union of India & Ors" ("Writ Petition") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e., construction activities were only allowed between 6:00 am to 6:00 pm. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely lifted by the Hon'ble Supreme Court only on 14.02.2020.
- All the above stated problems are beyond the control of the developer i.e., the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainant that the construction activity at the said project site had to be halted for some time due to certain unforeseen circumstances which are completely beyond the control of the developer.

m. In view of the above facts and circumstances the demands of the complainant for grant of delay penalty compensation at the exaggerated interest, particularly for the period which was wasted due to aforesaid reasons is not tenable and the complainant is only entitled to the penal interest, as per the clauses of the builder buyer agreement. It is respectfully submitted that if such prayers are allowed, the same will materially affect the construction works at site, which will affect the interests of all the other allottees who have

booked flats in the said project. It is relevant to point out herein that at present the respondent is focusing on the completion and delivery of the said project. The monies received from the allottees have been utilized in the construction activity and thus there is no justification in the demands made by the complainant.

- n. In view of the above facts and circumstances the demands of the Complainant for grant of delay penalty compensation at the exaggerated interest, particularly for the period which was wasted due to aforesaid reasons is not tenable and the complainant is only entitled to the penal interest, as per the clauses of the builder buyer agreement. It is respectfully submitted that if such prayers are allowed, the same will materially affect the construction works at site, which will affect the interests of all the other allottees who have booked flats in the said project. It is relevant to point out herein that at present the respondent is focusing on the completion and delivery of the said project. The monies received from the allottees have been utilized in the construction activity and thus there is no justification in the demands made by the complainant.
- o. The demand of the complainant to demand exorbitant amount in the form of compensation is baseless and jeopardise the whole project. It is submitted that if there is any delay in handing over the possession, the delay compensation shall be given to the complainant in the manner provided in the buyer agreement under clause 5.10 of the buyer agreement. It is reiterated herein that there is no intentional delay at present and hence, the concern of the complainant is unwarranted and premature at this stage.
- p. It is noteworthy to mention that the project of respondent is almost nearing the stage of completion. It is submitted that respondent has launched 420 numbers of independent floors to be constructed on 140 plots. Out of the 258 floors / units were sold by the company till date.

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7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the Authority:**

8. 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**

9. 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 the entire Gurugram District for all purposes 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**

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

**Section 11(4)(a)**

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

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

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

11. Hence, given 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.

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

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**F.I Objections regarding Force Majeure.**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by NGT, Demonetization, Haryana State Pollution Control Board, and other Authorities to curb the pollution in NCR, covid-19 etc. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 5.1 of agreement, the due date of handing over of possession was provided as 11.08.2018. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 11.08.2018. Further, the time taken in governmental bans/guidelines cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and are for very shorter period of time. The promoter is required to take the same into consideration while launching the project.
13. The respondent's invocation of the force majeure clause, citing the COVID-19 pandemic as a reason for non-performance, is without merit in this case. The contractual due date for possession was stipulated as 11.08.2018. This deadline occurred well before the imposition of the nationwide lockdown on 20.03.2020, which was a direct response to the pandemic. Therefore, the circumstances cited by the respondent as force majeure did not affect their ability to fulfill the contractual obligation by the specified due date. As such, the plea based on the alleged impact of the pandemic is not tenable and is hereby rejected. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

**G. Findings on relief sought by the Complainants:**

**G.I Direct the respondent to pay interest towards delayed possession on the amount of Rs. 79,25,760/- w.e.f. 11.08.2018 till the actual date of handing over the possession with interest.**

14. The complainant was allotted a unit in the project of respondent "Woodview Residencies" in at Sector 89-90, Gurgaon vide allotment letter dated 11.02.2015 for a total sum of Rs.1,25,43,749/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 79,25,760/-
15. Upon perusal of the documents available on the record, the respondent failed to offer the possession of the allotted unit till date and did not receive occupation certificate from competent authority. The complainant took a plea that offer of possession was to be made in made in 2018, but the respondent has failed to handover the physical possession of the allotted unit.
16. The complainant intends to continue with the project and is seeking delay possession charges against the paid-up amount as provided under the 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, —*

- (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 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."*

17. As per clause 5.1 of the draft agreement provides for handing over of possession and is reproduced below:

*5.1 Subject to Clause 5.2 and subject to the Buyer making timely payments, the Company shall endeavor to complete the construction of the Building Block in which the Dwelling Unit is situated within 36*

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*months, with a grace period of 6 (six) months from the date of issuance of Allotment Letter provided that all amounts due and payable by the Buyer has been paid to the Company in timely manner. The Company shall be entitled to reasonable extension of time for the possession of the Dwelling Unit in the event of any default or negligence attributable to the Buyer's fulfillment of terms and conditions of this Agreement.*

18. 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 draft agreement. By virtue of clause 5.1 of the draft agreement, the possession of the subject unit was to be delivered within a period of 36 months with an additional grace period of 6 months from the date of issuance of allotment letter. The due date is calculated 36 months from date of allotment of unit including a grace period of 6 months which comes out to 11.08.2018.
19. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated has not been received till date by the promoter. The complainant, for delay by the promoter and failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the draft buyer's agreement, wished to seek delay possession charges.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates*

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*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, 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., 07.11.2024 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—*
- (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;"*
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 clause 5.1 of the draft buyer's agreement, the possession of the said unit was to be delivered on 11.08.2018 (due date of possession). The OC has not been obtained by the



respondent till date. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the draft buyer's agreement.

25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been granted by the competent authority on 26.10.2023. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable on the total amount paid by the complainant from due date of possession till the date of offer of possession plus 2 months, after obtaining the occupation certificate or actual handing over of possession, whichever is earlier.
26. Accordingly, the non-compliance of the mandate contained in in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10 % p.a. w.e.f. 11.08.2018 till the date of offer of possession plus 2 months after obtaining the occupation certificate as per provisions of Section 18(1) of the Act read with rule 15 of the rules.
- G.II. Declare that the alleged transfer of the said upcoming project by the respondent including its rights and liabilities therein, vide respondent's communication dated 03.10.2019, is in complete contravention of section 15 of the RERA, 2016, which came into force w.e.f. 26.03.2016.**
- G.III Declare all acts executed/resolutions passed including those proposed to be executed both by the Respondent as well as by the purported transferee viz., M/s Ace Mega Structures Pvt Ltd, pursuant to the alleged transfer of the said upcoming project by the respondent including its rights and liabilities therein, vide respondent's communication dated 03.10.2019, as non-est.**

- G. IV. Direct the respondent's unilateral act of attempting to rescind the buyer agreement enclosed vide respondent's communication dated 28.07.2015 bearing Ref No. WR0129 by seeking to substitute and novate the same by a fresh contract/agreement is *per se* illegal.
- G.V. Direct the respondent to confirm precise date of handing over of the said dwelling unit to the complainants.
- G.V. Direct the respondent to confirm precise date of handing over of the said dwelling unit to the complainants.
- G.VI. Direct the respondent to provide details of the location of the said dwelling unit and also confirm that the said location satisfies the preferential location criteria promised and assured to the complainants such as dwelling unit is overlooking 24-meter-wide road, said 24-meter-wide road is having direct access to the main road etc.
- G.VII. Direct respondent to confirm whether or not completion certificate has been obtained from the concerned authority(s) qua the said dwelling unit/tower/project in question.
- G.VIII. Direct the respondent to confirm whether or not club house has been construed and made completely operational in the said upcoming project.
- G.IX. Direct the respondent to provide complete details apropos the *simplicitor* plots sold by the respondent in the said upcoming project.
27. The reliefs sought by the complainant, as mentioned above, are rendered redundant, as the delayed possession charges along with interest is being granted by the Authority until the issuance of the Occupancy Certificate (OC), which is to be issued by the competent authority upon the completion of specific work/requirements in accordance with the sanctioned plan.
- G.X. Direct the respondent to pay compensation of Rs. 1,00,000/- on account of litigation expenses.
28. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357*), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

**H. Directions issued by the Authority:**

27. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with 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 is directed to pay delay possession interest to the complainant against the paid-up amount of Rs. 79,25,760 at the prescribed rate i.e., 11.10% per annum for every month of delay from due date of possession till expiry of 2 months from the date of offer of possession after obtaining occupation certificate.
  - ii. The rate of interest chargeable by the respondent/promoter from the allottee in the event of default shall be at the prescribed rate of 11.10%. This rate shall be the same as the rate of interest that the promoter is liable to pay to the allottee in the event of default, specifically in cases of delayed possession, as per section 2(za) of the Act.
  - iii. The respondent is hereby directed to refrain from charging any amounts or fees not expressly included in the terms of the Builder-Buyer Agreement from the complainant.
  - iv. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
28. Complaint stands disposed of.
29. File be consigned to the Registry.

**Dated: 13.02.2025**

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