

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

Complaint no.:	2011 of 2023
First date of hearing:	27.09.2023
Order Reserved On:	04.10.2024
Order Pronounced On:	10.01.2025

Rita Narula  
R/o D-92, F/F, Defence Colony,  
South Delhi-Delhi

**Complainant**



Versus

1. M/s Athena Infrastructure Ltd.  
**Office address:** Blue Square One, We work,  
1<sup>st</sup> floor, 246 Phase IV, Udyog Vihar, Gurugram
2. Indiabulls Real Estate Pvt. Ltd.  
**Address:** Indiabulls House, Ground Floor, 448-451,  
Udyog Vihar, Phase-V, Gurugram-122016

**Respondents**

**CORAM:**  
Shri Arun Kumar

**Chairman**

**APPEARANCE:**  
Shri Divjot Singh  
Shri Rahul Yadav for R1  
None for R2

**Complainant**

**Respondents**

**ORDER**

1. The present complaint dated 03.05.2023 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 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 as provided under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	IndiaBulls Enigma, Sector 110, Gurugram, Haryana
2.	Total area of the project	15.6 acres
3.	Nature of the project	Residential Complex
4.	DTCP license no.	213 of 2007 dated 05.09.2007 valid upto 04.09.2024 Licensee : Athena Infrastructure Private Limited
		10 of 2011 dated 29.01.2011 valid upto 28.01.2023 Licensee : Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid upto 19.06.2023 Licensee: Varali Properties
5.	HRERA registered/ not registered	Registered vide no. 351 of 2017 dated 20.11.2017 Valid till 31.08.2018 354 of 2017 dated 17.11.2017 valid till 30.09.2018 353 of 2017 dated 20.11.2017 valid



		till 31.03.2018 346 of 2017 dated 08.11.2017 valid till 31.08.2018
6.	Date of execution of buyer's agreement with original allottee	26.07.2011 (page no. 21 of complaint)
7.	Unit no.	C114, 11 <sup>th</sup> floor, building no. C [page 25 of complaint]
8.	Unit measuring (super area)	3350 sq. ft. (Page no. 25 of complaint)
9.	Possession clause	<b>21. POSSESSION</b> The Developer shall endeavor to complete the construction of the said building /Unit within a period of <b>three years, with a six months grace period thereon from the date of execution of the Flat Buyer Agreement</b> subject to timely payment by the Buyer(s) of the Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. [page 29 of complaint]
10.	Due date of possession	26.01.2015 [ <b>Note:</b> Grace period is included]
11.	Transfer of unit to complainant/subsequent allottee	28.09.2015 (Page no. 43 of complaint)
12.	Total sale consideration	Rs. 2,31,11,631/- (as per applicants ledger on page no. 61 of complaint)
13.	Total amount paid by the complainant	Rs. 2,31,11,628/- (as per applicants ledger on page no. 61 of complaint)



14.	Request for refund by complainant	11.08.2021 (page no. 62 of complaint)
15.	Occupation certificate granted on	12.10.2021 [page no. 21 of reply]
16.	Offer of Possession	12.01.2023 [page 68 of complaint]

**B. Facts of the complaint**

3. That in the year 2011, one Mr. Abhishek Garg applied for a flat in the apartment complex and was allotted unit bearing no. C114 on the 11th floor of tower/block no. C having a super area of 3350 square feet along with two covered car parking spaces ('the Flat'). At the time of booking Mr. Abhishek Garg paid a sum of Rs. 5,00,000/- to the respondents towards the booking amount. Pursuant to the allotment, the flat buyer agreement dated July 26, 2011 was also executed between the respondent no. 1 and Abhishek Garg in respect to the flat.
4. That subsequently, in July 2015 a deal was struck between Mr. Abhishek Garg and the complainant whereby Mr. Abhishek Garg agreed to transfer/sell the flat in question to the complainant. Accordingly, a request was made by Mr. Abhishek Garg to the respondent no. 1 to transfer the flat in question in favour of the complainant. The ownership of the flat was therefore transferred in favour of the complainant upon the payment of necessary transfer charges.
5. That as per the buyer agreement, the basic selling price (BSP) of the flat was agreed to be Rs. 1,86,90,000/-. In addition to the BSP, the total cost of the flat also included preferential location charges (PLC) at the rate of Rs. 200 per sq. ft., IFMS charges at the rate of Rs. 100 per sq. ft., clubhouse

charges of Rs. 2,00,000/-, EDC/IDC as per applicable rates and other charges as mentioned in clause 6 of the buyer agreement. The total cost of the flat was Rs. 2,10,50,750/-.

6. That as per the payment schedule and the demands raised by the respondent no. 1 from time to time, the complainant and the previous allottee have already paid the agreed amount with respect to the flat. That by September 2015 i.e. when the complainant stepped into the shoes of initial allottee, the respondent no. 1 had already received a sum of Rs. 2,01,62,292/- towards the total cost of the flat. The complainant has already paid a sum of Rs. 2,16,57,243/-.
7. That further, in terms of clause 21 of the agreement, the respondent had agreed to complete the construction of the project within a period of 36 months from the date of execution of the buyer agreement with a further grace period of six months. The respondent therefore should have completed construction by 26.07.2014 or latest by the 26.01.2015.
8. That the complainant along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false assurances that the possession of the flat would be delivered as per schedule.
9. That the respondent failed to deliver the possession within the stipulated timelines. On 11.08.2021, the complainant sent a letter to the respondent wherein she expressed her anguish for the delay in possession of the flat and requested the respondent to cancel her booking and refund the money already deposited by her. The respondent, however, neither replied to the said letter nor delivered the possession of the flat. Further



to the surprise of the complainant, the respondent instead of delivering the possession of the flat raised a further demand of Rs. 1,83,104 vide demand letter dated 11.03.2022.

10. That the possession of the flat was finally offered by the respondent only on 12.01.2023 i.e. after an inordinate and unexplained delay of more than eight (8) years. Therefore, the respondent is liable to pay to the complainant delayed possession charges at the prescribed rate on the amount already deposited with the respondent, till the time the actual possession of the flat in question is handed over to the complainant.
11. That subsequently, after the receipt of the letter dated 12.01.2023, the complainant visited the flat and was surprised to find that the work on the project site and inside the flat was still not completed. The finishing work in all rooms, kitchens, lobby, bathroom and balconies was incomplete. It was found that the doors and windows were not installed properly and were of poor workmanship. Further, the work of PoP, painting and polishing on the doors, windows, shelves and walls was also incomplete. The complainant during the site visit pointed out the said defects to the representatives of the respondent and requested them to rectify the same. The complainant further informed the respondent that she will accept the possession of the flat only after the defects pointed out by her in the flat are rectified by the respondent to her satisfaction. The factum about the visit and defects in the flat was also pointed out by the complainant vide her e-mail dated 18.03.2023.
12. That the complainant is hereby seeking delayed possession charges and interest on account of delay in handing over the possession of the flat.

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

13. The complainants have sought following reliefs:

- a. Direct the respondents to complete the project 'Indiabulls Enigma' as agreed in the builder buyer's agreement dated 26.07.2011.
  - b. Direct the respondents to hand over the vacant physical possession of the flat in a habitable condition along with covered car parking and with all the necessary specifications and approvals as agreed in the builder buyer's agreement.
  - c. Direct the respondents to pay to the complainant delayed possession charges at the rate of 10.75% per annum, till the time the actual possession of the flat in question is handed over to the complainant on account of delay in handing over the possession of the flat on the amount already deposited with the respondents or in the alternative refund the money already deposited at the rate of 10.75 % per annum in case the possession is not handed over to the complainant.
  - d. Direct the respondents to refund the covered car parking charges paid by the complainant to the respondents.
  - e. Penalize the respondents for providing false information or contravening the provisions of Section 4 of RERA, 2016.
  - f. Award litigation costs.
14. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1**

15. The respondent has contested the complaint on the following grounds:
16. That the present complaint is otherwise not maintainable, either in law or facts. The complainant in the present complaint is not the original allottee of the unit under question. The complainant looking into the



financial viability of the project and its future monetary benefits willingly purchased the subject unit in question from its original allottee i.e. Mr. Abhishek Garg and subsequent to receiving transfer request, the subject unit was transferred in name of the complainant.

17. That the subject unit was transferred in name of the complainant on 23.09.2015 which is also evident from the letter dated 28.09.2015 (page 43 of the Complaint) sent to the complainant confirming the said transfer.
18. That the complainant, who was well aware about the construction status of the project voluntarily got the allotment of the subject unit transferred onto her name from its original allottee. The complainant with eyes wide open, took over the agreement from the original allottee.
19. That with respect to the subject unit, a flat buyers agreement ("FBA") dated 26.07.2011 was entered into between the original allottee i.e. Mr. Abhishek Garg and the respondent. That the complainant was aware of the fact that as per the agreed terms of the FBA the answering respondent shall endeavor to complete the construction of the said building/unit" within the stipulated time as mentioned in the said agreement. That knowing fully well the construction status of the project the complainant purchased the subject unit from the original allottee and got the subject unit transferred in her name on 23.09.2015 i.e. after lapse of 8 months from the proposed date for offer of possession as per the FBA.
20. That the complainant through the present complainant is seeking delay possession charges from the respondent merely on ground that she has stepped into the shoes of the previous allottees, and that the provisions of the FBA would apply to her as if she was the original allottee, flies in





the face of all logic and reason, is entirely untenable and simply cannot be accepted.

21. That prior to the transfer of the subject unit in name of the complainant an amount of Rs. 2,01,62,292/- was paid by the original allottee, and against the remaining sale consideration an amount of Rs. 14,94,951/- was paid by the complainant after transfer of the subject unit in her name. That accordingly, delay interest if any, can only be applicable on the amount paid by the complainant only and not on the entire amount received against the subject unit which also includes the amount paid by the original allottee and not by the complainant.
22. That the respondent after completing the construction of the alleged tower applied for grant of occupational certificate before the Director, Town and Country Planning Department, Chandigarh (Haryana) on 19.04.2021, and the same was granted on 12.10.2021 by the Directorate of Town and Country Planning, Haryana.
23. That subsequent to receipt of the occupational certificate, the respondent vide letter dated 11.03.2022 informed the complainant that the subject unit was ready for possession, and vide the said letter, possession was offered to the complainant. That vide the said letter, the complainant was also asked to clear the final installment/ due of Rs. 1,83,104/- towards the subject unit.
24. That the complainant despite being offered the possession of the subject unit on 11.03.2022 has till date not taken the physical possession of the same whereby delaying the registration process.
25. That the complainant, being aware of the construction status of the project and further knowing well the proposed time for possession, purchased the subject unit from its original allottee with a speculative



intent having sole purpose of investment and monetary gains out of the said investment. Since there is a recession in the real estate market, the complainant is now levying bald and baseless allegations against the respondent by way of the present complaint.

**E. Reply by the respondent no. 2**

26. That the instant complaint filed by the complainant is not maintainable, on facts or in law, and is as such liable to be dismissed/ rejected at the thresh hold, being filed superfluously impleading the respondent no.2 as a party to the complaint. Hence the instant complaint against the respondent no. 2 is liable to be dismissed on the same ground.
27. That the present complaint is not maintainable before the Hon'ble Authority and also devoid of any merits, which has been preferred with the sole motive to harass the respondent no.2. That there is no privity of contract between the complainant and the respondent no.2, hence the contentions taken in the instant complaint by the complainant against the respondent no.2 are false, baseless and without any veracity. Hence the instant complaint filed against respondent no.2 is liable to be dismissed on the very sole ground.
28. That there is no privity of contract between the complainant and the respondent no.2, hence in the absence of any relationship between the complainant and the answering respondent, the complainant is not entitled for any claim / relief from the respondent no.2 as contended in the instant complaint by the complaint. Also, it is respectfully submitted that the complainant have not made any payment in the name and account of respondent no.02 with respect to his alleged booked unit.
29. That the relationship that forms the basis of the instant complaint arises out of the documents executed by and between the complainant and the

developer. There is no contractual relationship between complainant and the answering respondent since no documents were ever signed / executed by and between the complainant and the respondent no.2.

30. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**F. Jurisdiction of the authority**

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

**F.I. Territorial jurisdiction**

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

**F.II. Subject matter jurisdiction**

33. 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;*

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

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

34. 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.

**G. Objections raised by respondent no. 2**

**G.I Objection with regard to mis joinder of respondent no. 1 in the complaint.**

35. The respondent no. 2 i.e., Indiabulls Real Estate Pvt. Ltd. has raised an objection regarding its impleadment as a party to the case. The authority observes that the M/s Athena Infrastructure Limited is the developer of the project. On failure to fulfil their liability to complete the project by the due date, the complainant approached the authority seeking relief of delay possession charges. A perusal of various documents placed on the record shows that the buyer's agreement with regard to the allotted unit was executed between the complainant and respondent no. 1. Even after allotment and buyer's agreement, demands for various payments were raised against the allotted unit by respondent no. 1 only. Thus, it shows that there is no privity of contract between respondent no. 2 and the complainant and as such the plea of the respondent no. 2 is valid and thus, would be justified to delete its name from array of party.

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

**H.I. Direct the respondents to complete the project 'Indiabulls Enigma' as agreed in the builder buyer's agreement dated 26.07.2011.**

**H.II Direct the respondents to hand over the vacant physical possession of the flat in a habitable condition along with covered car parking and with all the necessary specifications and approvals as agreed in the builder buyer's agreement.**

**H.III Direct the respondents to pay to the complainant delayed possession charges at the rate of 10.75% per annum, till the time the actual possession of the flat in question is handed over to the complainant on account of delay in handing over the possession of the flat on the amount already deposited with the respondents or in the alternative refund the money already deposited at the rate of 10.75 % per annum in case the possession is not handed over to the complainant.**

36. In the present complaint, the original allottee i.e., Abhishek Garg booked a unit in the project of the respondent no. 1, namely, Indiabulls Enigma situated at Sector-110, Gurgaon, Haryana. The flat buyer's agreement dated 26.07.2011 was executed between the original allottee and the respondent no.1. The original allottee was allotted unit no. C114 on 11<sup>th</sup> floor in building C admeasuring 3350 sq. ft. for a total sale consideration of ₹ 2,31,11,631/-. As per clause 21 of the flat buyer's agreement, the possession of the subject unit was to be handed over within 3 years along with a grace period of 6 months from the date of execution of buyer's agreement. Thus, the due date of handing over possession comes out to be 26.01.2015. Thereafter, the original allottee i.e., Abhishek Garg transferred the subject unit in favour of Ms. Rita Narula i.e., the complainant herein on 28.09.2015.

37. The complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already



paid by her as provided under the proviso to section 18(1) of the Act which 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."*

38. Clause 21 of the flat buyer's agreement dated 26.07.2011, provides for handing over possession and the same is reproduced below:

***21. The Developer shall endeavor to complete the construction of the said building /Unit within a period of 3 years, with a six-month grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit."***

39. **Admissibility of grace period:** As per clause 21 of flat buyer's agreement, the respondent-promoter has proposed to handover the possession of the subject unit within a period of 3 years along with a grace period of 6 month from the date of execution of flat buyer agreement. As far as grace period is concerned, the grace period is unqualified and does not prescribe any pre-conditions for grant of the said grace period of 6 months. Accordingly, the authority literally interpreting the possession clause, allows this grace period of 6 months to the promoter for exigencies beyond the control. Accordingly, the due date of possession comes out to be 26.01.2015.



40. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee(s) 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]*

*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.*

41. The legislature, in its wisdom in the subordinate legislation under the 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.
42. 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%.
43. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which



the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*“(za) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”*

44. On consideration of the documents available on record and submissions made by the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent-promoter 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 21 of the flat buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 3 years with a grace period of 6 month from the date of execution of flat buyer's agreement. As such the due date of handing over of possession comes out to be 26.01.2015 including grace period of 6 month as it is unqualified. The occupation certificate for the project where the subject unit of the allottee is situated was received on 12.10.2021.
45. Furthermore, owing to the failure of respondent no. 1 to deliver possession of the property within the stipulated time frame, the complainant submitted a formal request for a refund of the amount paid on 11.08.2021. However, the respondent no. 1 company did not consider





or respond to this request. Subsequently, upon receipt of the occupancy certificate, possession was eventually offered to the complainant.

46. In light of the aforementioned facts, the Authority is of the opinion that the complainant is a subsequent allottee, having acquired the apartment from the original allottee on 28.09.2015, which is after the prescribed due date for possession. This indicates that the complainant was fully aware that the construction of the tower of the subject unit had not been completed, and that the occupancy certificate for that portion of the project had not yet been obtained. Notwithstanding this knowledge, the complainant voluntarily proceeded with purchasing of the subject unit, thereby implicitly accepting the delay in possession. Furthermore, the complainant's involvement only commenced on 28.09.2015, when the subject unit was officially transferred to her. Therefore, in the interest of fairness and natural justice, any entitlement to delayed possession charges may only be considered from the date of endorsement, i.e., 28.09.2015, which is the date on which the complainant stepped into the shoes of the original allottee.
47. The Authority further finds that there has been a delay on the part of the respondents/promoter in offering possession of the allotted unit to the complainant in accordance with the terms of the buyer's agreement dated 26.07.2011. This delay constitutes a failure on the part of the respondent/promoter to fulfill their contractual obligations, including the timely delivery of possession as stipulated in the agreement. 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.



48. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the date on which the complainant stepped into the shoes of the original allottee (date of endorsement letter) i.e., 28.09.2015 till the date of valid offer of possession (12.01.2023) plus 2 months i.e., 12.03.2023 after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**H.IV Direct the respondents to refund the covered car parking charges paid by the complainant to the respondents.**

49. The authority observes that as per clause 4 of the flat buyer's agreement, the respondent has agreed to allot 2 covered car parking spaces to the complainant herein. Clause 6 of the flat buyer's agreement stipulates the total sale price of the unit. It is pertinent to note that 'Car Parking' is not included in the components which constitutes total sale price of the subject unit. Thus, the respondent has not charged any amount towards the car parking. Further, this fact is also corroborated by the fact that as per SOA dated 11.01.2023 the respondent has mentioned price of car park as '0/-'. Thus, the relief sought by the complainant regarding refund of car parking is hereby declined.

**H.V Penalize the respondents for providing false information or contravening the provisions of Section 4 of RERA, 2016.**

50. The above-mentioned relief sought by the complainant was not pressed by the complainant counsel during the arguments. The authority is of the



view that the complainants counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

#### **H.VI Award litigation costs.**

51. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

#### **I. Directions of the authority**

52. 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 promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent no. 1 is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from the date on which the complainant stepped into the shoes of the original allottee (date of endorsement letter) i.e., 28.09.2015 till the date of valid offer of possession (12.01.2023) plus 2 months i.e., 12.03.2023 after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed

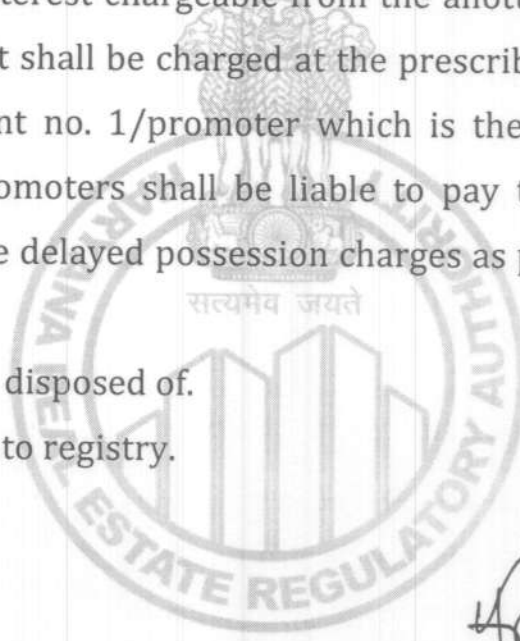


rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The arrears of such interest accrued from 28.09.2015 till 12.03.2023 shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent no. 1/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.

53. Complaint stands disposed of.

54. File be consigned to registry.



*Arun Kumar*

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2025