

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

Complaint no. : 1528 of 2021
Complaint filed on : 31.03.2021
Order reserved on: 01.08.2024

Hemali Sharma

R/o: B-154, Belvedere Tower, Cyber City,
Gurugram, Haryana

Complainant

Versus

M/s Mascot Buildcon Pvt. Ltd.

M/s Home Town Properties Pvt. Ltd.

Regd. office: 294/1, Vishwakarma Colony, Mehrauli Badarpur
Road New Delhi -110044

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Arun Kumar Khatana (Advocate)

Shri Harshit Batra (Advocate)

**Complainant
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

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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:

S. No.	Particulars	Details
1.	Name and location of the project	"Oodles Skywalk", Sector 83, Gurugram
2.	Unit no.	G-116, Ground floor (As per BBA on page 23 of complaint)
3.	Unit area admeasuring (super area)	252.95 sq. ft. (As per BBA on page 23 of complaint)
4.	Allotment Letter	19.03.2014 (Page 39 of reply)
5.	Date of execution of buyer's agreement	01.10.2014 (As per BBA on page 21 of complaint)
6.	Possession Clause	38. <i>The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.</i>
7.	Date of start of construction	26.03.2014 (As per demand letter dated 12.01.2018 on annexure R-4)
8.	Due date of possession	01.10.2017 (Calculated as 36 months from date of execution of BBA i.e., 01.10.2014 as the same is later)
9.	Sale consideration	Rs.32,93,409/- (As per BBA on page 23 of complaint)
10.	Amount paid by the complainant	Rs.35,46,174/- (Rs.17,11,931/- paid before cancellation + Rs. 18,34,243/- paid on revival of unit) (As clarified by both the counsel during proceedings dated 07.11.2024)

11.	Reminder Letters	21.02.2018, 20.03.2018 (Page 71-72 of reply) 05.05.2018, 25.05.2018, 30.06.2018 (Page 74-76 reply) Final Reminder: 31.07.2018 (Page 77 of reply) 22.10.2018 (Page 79 of reply) Final Reminder: 16.01.2019 (Page 80 of reply) Final Opportunity: 30.05.2019 (Page 81 of reply)
12.	Cancellation Letter	05.08.2019 (Page 82 of reply)
13.	Revival of unit on request of complainant dated	10.02.2020 (Page of 47 complaint)
14.	Occupation certificate	26.10.2023 (As annexed in written submissions filed by the respondent)
15.	Offer of possession	15.11.2023 (As per Demand for Offer of Possession annexed with written submission by respondent)

B. Facts of the complaint:

- The the complainant booked a unit in the project named "Oodles Skywalk" in Sector 83, Gurugram by paying an advance amount of approx. Rs. 6.48Lacs to the respondent by submitting application form dt. 29.07.2013. As per terms mentioned in the said application form, the respondent had committed to offer the possession of the unit to the complainant within 3 years from the date of booking.
- Accordingly, the complainant was allotted a unit no. G-116, admeasuring 252.95 sq. ft. for a total sale consideration of Rs. 32.93 Lacs. At the time of applying for the unit, it was informed to the complainant by the respondent that it had the complete right, title and authorization on the project, land and also had the requisite sanctions and approvals from the relevant authorities to undertake

such construction. It was further informed that the project will be completed within a period of 36 months from the date of booking and the complainant will be handed over possession of the unit in question within the said time period. It was on the basis of such representations that the complainant had booked the unit and had paid the above said booking amount.

5. After the booking of the unit, no buyer's agreement was executed though earlier it was assured that Buyers Agreement will be executed within 30 days of booking. It is pertinent to mention here that after expiry of more than 1 year from the date of booking, the respondent executed the buyer's agreement in favour of the complainant on 04.10.2014.
6. In the buyer's agreement, it was represented that the said land was owned by one Mr. Dharam Singh who has entered into Collaboration Agreement dated 29.9.2010 read with Addendum dated 18.2.2013 with M/s Home Town Properties Pvt Ltd. and on the basis of same Licence no. 08 of 2013 was granted to M/s Home Town Properties Pvt. Ltd. who in turn had entered into a assignment agreement dt. 09.07.2014/11.7.2014 in favor of M/s Mascot Buildcon Private Limited i.e. respondent. The said Prime IT Solutions subsequently applied for and purportedly obtained a license bearing no. 47 of 2012 dated 12.05.2012 in respect of the project land. It was further represented that development plans had also been approved and based on such approvals, the respondent is competent and entitled to execute the project. Believing such representations to be true the complainant executed the buyer's agreement dated on 04.10.2014. The respondent has cleverly and with malafide intentions has changed the date of offer of possession from 3 years from the date of booking to 3 years from the date of buyer's agreement, meaning thereby the respondent had already delayed the committed period of offer of possession from 3 years to 4 ½ years from the date of booking and now it's almost more than 8 and the respondent has till date not even completed the project.

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7. Upon execution of the agreement, the respondent continued to issue demand letters purportedly as per the stage of construction and the complainant continued to make payments in respect of the same as evidenced by various receipts issued during the contemporary period.
8. Till date the complainant had made payment of Rs. 17.10 Lacs to the respondent towards the sale consideration of the above stated booked unit till 2016 and subsequently as the development work on the site was halted /stopped hence the respondent stopped making further payment for false demands as no such construction milestone was achieved at that time. Further the respondent pressurized the complainant to make balance payments else the booking will be cancelled and amounts will be forfeited. Fearing the cancellation and due to coercion of the respondent, the complainant was made to make further payment of Rs. 18.34 Lacs to the respondent on 11.2.2020 vide cheque no 067722 dated 01.12.2019 which was got encashed by the respondent and which included exorbitant interest amounts as the total sale consideration mentioned in the allotment letter is Rs. 32.93 Lacs and respondent has already received more than Rs. 35.45 Lacs.
9. Thereafter since February 2020, till date the complainant has sent more than dozen reminders to the respondent to provide the receipt of the said amount of Rs. 18.34 Lacs and to offer possession but the respondent has turned a blind eye towards all the genuine and legal requests of the complainant and the respondent has been harassing the complainant to the core.
10. Till date the project has not been completed on the project land and now the respondent no. 1 is incapable of delivering possession and there is no hope or scope of completion of construction. Additionally, there is no other development on the project land for last 3-4 years and the construction activities have been stopped since 2016.
11. Hence in the present case as the respondent has failed to complete project and offer possession within 3 years from date of application form i.e. till 29.7.2016;

and/or 3 years from date of buyer's agreement i.e. till 04.10.2017 and even after expiry of 7 and ½ years from date of booking of unit i.e. till date of filing of present complaint. The complainant has every right to withdraw from the project and to claim refund of amounts paid along with interest thereon. In the instant case the date "specified" in the agreement for sale for giving possession was 4th October 2017 and till date i.e. till 5.3.2021, project is still not complete. Hence once, it is evident that promoters have failed to give possession by the "specified date as mentioned in the agreement", promoters are not entitled for extension of such specified date on the basis of any clause regarding grace period in the agreement for sale and the promoter has been in default thereof. Hence the present petition.

C. Relief sought by the complainant:

12. On 06.10.2023, the counsel for the complainant filed an application seeking an amendment to the relief originally sought. At the time of filing the complaint, the complainant had sought a refund as the relief. However, by the application dated 06.10.2023, the complainant sought to amend the relief to claim delay possession charges. The said application was duly allowed by the authority vide order dated 14.12.2023.

13. The complainants have sought the following relief(s):

- i. Direct the respondent to pay delay possession charges to the complainant from 04.10.2017 till actual offer of possession once OC is received and also direct the respondent to refund/adjust the excess amounts received by it towards the excess interest charged @24% per annum.
- ii. Direct the respondent to pay towards defect in title, loss of opportunity, for harassment, for mental trauma etc., caused along with litigation charges and and inflammation charges Rs. 25,00,000/-.
- iii. Any other relief which this Hon'ble Authority deems fit and just.

14. 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:

15. The complainant had approached the respondent no.1 somewhere in 2014 and expressed an interest in booking a unit in the commercial project developed by the respondent no. 1 known as "OODLES SKYWALK" situated in Sector 83, Village Sihi, Tehsil Manesar & District Gurgaon, Haryana. Prior to making the booking, the complainant conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent no. 1, to book the unit in question.
16. Thereafter, the complainant vide an application form applied to the respondent no.1 for provisional allotment of a unit in the project. the complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no G-116, admeasuring 252.95 sq. ft, in the project. The complainant consciously and willfully opted for a construction linked payment plan for remittance of the entire sale consideration for the unit in question and further represented to the respondent no.1 that she shall remit every installment on time as per the payment schedule. the respondent no.1 had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor.
17. In pursuance of the application form, the allotment letter was issued dated 19.03.2014 in favour of the complainant allotting retail space/shop bearing no. 'G-116' on ground floor, admeasuring 252.95 sq. ft. Thereafter, immediately on 01.10.2014, finally, the space buyer agreement (SBA) was executed between the complainant and the respondent no. 1 which contained the final understandings between the parties stipulating all the rights and obligations.
18. The complainant has no cause of action to file the present complaint as the present complaint is based on an erroneous interpretation of the provisions of

the Act as well as an incorrect understanding of the terms and conditions of the space buyer agreement dated 01.10.2014. It is further submitted that the complainant is herself a consistent defaulter as well as an investor and has booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainant has filed the present purported complaint to wriggle out of the agreement. The complainant does not come under the ambit and scope of the definition an allottee under section 2(d) of the Act, as the complainant is an investor and booked the unit in order to enjoy the good returns from the project.

It is pertinent to mention that the complainant, till 2017 only paid amount cumulating to Rs. 17,11,931/- in three different timelines i.e. Rs. 12,95,931 at the time of allotment of the unit, the second instalment was paid in 2016 amounting to Rs. 3,00,000/- and the third instalment was made in 2017 amounting to Rs. 1,16,000/-. It is to be noted that the complainant stopped the payments towards the said unit after 2017 deliberately and intentionally towards the total consideration of the unit amounting to Rs. 32,93,409 excluding the miscellaneous expenses. Thereafter, the respondent company sent several demand/reminder letters dated 12/01/2018, 21/02/2018, 20/03/2018, 29/03/2018, 05/05/2018, 25/05/2018, 30/06/2018, 31/07/2018, 04/09/2018, 22/10/2018, 26/12/2018 to clear the outstanding dues by the complainant. The respondent company demanded payments as per the terms and conditions laid down in the space buyer agreement which included the principal amount of Rs. 16,59,307/- and an interest of Rs. 7,35,176/- till the final realization of the outstanding amount as on 10/02/2020. The last payment towards the agreed sale consideration was made dated 10/02/2020 amounting to Rs. 18,34,243/- (principal Rs. 10,99,067/- plus delay interest of Rs. 7,35,176/-) and since then no payment howsoever, has been made by the complainant despite the fact that

the project is complete up to 99% and is nearing the completion of the project. The possession of the unit as per clause 38 of the space buyer agreement was to be handed over within 36 months (plus the grace period of 3 months) from the date of the execution of the SBA and not from the date of the application form as stated by the complainant who is trying to confuse this Hon'ble Authority with his false, frivolous and moonshine contentions.

19. Space Buyer Agreement that was executed on 01.10.2014 therefore the date of the completion of the project therefore comes out to be 01.01.2018 and not somewhere in 2016/2017 which the complainant has stated in its complaint. The date of the completion of the project was further pushed due to the *force majeure* conditions i.e. due to the various NGT orders and the lockdown imposed because of the worldwide Covid-19 pandemic, which the construction work all over the NCR region came to halt.
20. Under clause 38 of the agreement, it was clearly stipulated by the respondents, that the company, based on its present plans and estimates, contemplates to offer possession of said unit to the allottee within 36 months (with ref. To clause 37) of signing of this agreement or within 36 months from the date of start of construction of the said Building, whichever is later with a grace period of 3 months, subject to *force majeure* events or governmental action/inaction. It was further stipulated that if the completion of the said building is delayed by reason of slow down, strike or due to a dispute with the construction agency employed by the "company", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the "company", the "company" shall be entitled to extension of time for delivery of possession of the said premises.
21. It was further stipulated that the "company" as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this agreement or if the circumstances beyond the control of the "company" so

warrant, the "company" may suspend the scheme for such period as it might consider expedient. It was further stipulated that if the company is unable to complete the project on account of law passed by the legislature or any other government agency, in that event, the company, if so advised shall be entitled to challenge the validity, applicability can challenge the efficacy of such law and the amount paid by the allottees shall remain with the company.

22. It is further pertinent to mention that the project at present date has been completed up to 99% (only fit outs and finishing of the project is due) and therefore, it will be difficult for the respondents to refund the money at this stage. Furthermore, entire work of the fire-fighting, plumbing, electrical, AC ducting work has been done and the internal finishing work is completed, and the possession would be given to the complainant within next few weeks. The complainant at this point where the project is almost at the edge of completion cannot be given relief for refund of the amount as it will be detrimental to the interests of the respondent as well as all the other investors who have invested in the project. It is pertinent to note that the refund of the consideration paid by the complainant to the respondent no.1 at this crucial juncture would bring a bad name to the goodwill of the entire company and will lead to an array of similarly filed frivolous and vexatious complaints asking for a similar relief, which will leave the respondents without any funds to carry on the completion of the project and would further go bankrupt. The respondent no.1 itself has infused huge sum of funds into the project so that the project could be completed at the earliest possible time. Despite force majeure conditions the respondent no.1 has made all the efforts in order to complete the project in time.
23. The complainant is attempting to raise issues at a belated stage, attempting to seek modification in the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least. In addition, the issues raised in the present complaint by the complainant are not

only baseless but also demonstrates an attempt to arm twist the respondent into succumbing to the pressure so created by the complainant in filing this frivolous complaint before this Hon'ble Authority and seeking the reliefs which the complainant is not entitled to.

24. 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:

25. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. 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

26. 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

29. 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.

27. 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:

F.I Objections regarding Force Majeure.

28. 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 38 of agreement, the due date of handing over of possession was provided as 01.10.2017. 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 01.10.2017. 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.

29. 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 01.10.2017. 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 delay possession charges to the complainant from 04.10.2017 till actual offer of possession once OC is received and also direct the respondent to refund/adjust the excess amounts received by it towards the excess interest charged @24% per annum

33. The complainant was allotted a unit in the project of respondent "Oodles Skywalk" in at Sector 83, Gurgaon vide allotment letter dated 19.03.2014 for a total sum of Rs.32,93,409/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 35,46,174/- (Rs.28,10,998 towards the principal and 7,35,176/- towards the interest).
34. Upon perusal of documents and pleadings made by the respondent in his reply, it has been found that allotment of booked unit was cancelled by the respondent due to non-payment of amount. At the time of the cancellation of the allotment of the unit, the respondent had already received an amount of Rs. 16,46,601.84/-, constituting nearly 50% of the basic sale price of the unit, which is Rs. 32,93,409/-. The complainant was allotted unit no. G-116 as per the allotment letter dated 19.03.2014. Subsequently, the builder-buyer agreement was executed on 01.10.2014. It was construction linked payment plan and hence the allottee was obligated to make payments as per the stage of construction According to clause 38 of the BBA, possession of the unit was to be handed over by 01.10.2017. Notwithstanding the issuance of several reminder and demand letters, and in light of the complainant's failure to settle the outstanding dues, the respondent, on 05.08.2019, issued a termination letter, thereby cancelling the booking of the unit.



35. The respondent through its written submissions, has contended that the complainant, by letter dated 10.02.2020, had requested for the revival of the cancellation and made a payment of Rs. 18,34,243. The respondent further emphasized the terms set forth in the letter dated 10.02.2020, wherein the complainant expressly stated that the same should be treated as full and final settlement with respect to the unit in question, and that the complainant would not, in the future, make any claim for delay possession charges. The relevant portion of the letter dated 10.02.2020 is reproduced below for the ready reference:

*"Kindly treat this as full & final settlement for the captioned units. This include BSP, EDC/IDC, PLC (if any) and taxes applicable. With this, **we will not claim any delay possession charges nor any delay interest is pending is payable by us.**"*

The respondent during proceedings also stated that the delay possession charges should be given on the amount of Rs. 17,11,931/- which was paid before the due date of possession as the complainant has already surrendered his rights vide letter dated 10.02.2020.

36. Considering the above submissions, the Authority is of the opinion that the delay possession charges should be calculated solely on the total amount paid by the complainant, i.e., Rs. 35,46,174/-, as delay possession charges constitute a statutory right conferred upon the allottee under the provisions of the Act. It is acknowledged that the unit was initially cancelled by the respondent in 2019 but was later reinstated in 2020 upon the complainant's request, following the complainant's payment of the delay penalty and the outstanding sale consideration. It is a well-established legal principle that an individual cannot be deprived of their statutory rights. There is no dispute that the respondent has failed to offer possession within the stipulated time frame, and the complainant has already compensated for the delay by paying the applicable delay interest. Consequently, the complainant is entitled to delayed possession charges on the total amount paid in respect of the unit.

37. It is pertinent to note that the complainant was allotted the unit on 19.03.2014, and in accordance with the payment plan, the respondent issued multiple reminder notices from 21.02.2018 to 30.05.2019 for the outstanding payments due in respect of the unit. On account of the complainant's failure to settle the outstanding dues, the respondent proceeded with the termination of the unit on 05.08.2019. Subsequently, the complainant submitted a request for reinstatement of the unit via letter dated 10.02.2023. In response to the complainant's request, the unit was reinstated by the respondent upon the payment of all outstanding dues along with delay penalty charges. In light of these facts, the Authority finds that the termination issued by the respondent was legally valid, as the complainant failed to remit the outstanding payments despite multiple reminders.
38. Furthermore, the unit was reinstated, and both parties reached a full and final settlement regarding the unit post-termination, as evidenced by the letter dated 10.02.2020. Since the unit was revived in favor of the complainant on 10.02.2020, the delay possession charges shall be calculated from the date of revival, i.e., 10.02.2020. This is because the unit was initially canceled due to the complainant's default, and the respondent, acting in good faith, reinstated the canceled unit at the complainant's request.
39. 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."*

40. As per clause 38 of the agreement provides for handing over of possession and is reproduced below:

The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer d. 37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction.

41. On consideration of the abovementioned clause, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 38 of the agreement, the possession of the subject unit was to be delivered within a period of 36 months with an additional grace period of 3 months from the date of execution of the agreement or date of obtaining all licenses or approvals. The due date is calculated 36 months from date of execution of agreement and comes to 01.10.2017. However, in the view of cancellation of the unit and subsequent revival/reinstatement on mutual understanding between both the parties on 10.02.2020, the due date shall be deemed to be 10.02.2020.

42. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated has been received on 26.10.2023. 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 buyer's agreement, wished to seek delay possession charges.

43. **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 which the State Bank of India may fix from time to time for lending to the general public.

44. 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.
45. 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%.
46. 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;"*

47. 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.
48. 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 38 of the buyer's agreement executed between the parties on 01.10.2014, the possession of the said unit was to be delivered on 01.10.2017. However, in the view of cancellation of the unit and subsequent revival/reinstatement on mutual understanding between both the parties on 10.02.2020, the due date shall be deemed to be 10.02.2020. In the present complaint the complainant was offered possession on 15.11.2023 by the respondent after obtaining of occupation certificate from the competent. The OC has been granted on 26.10.2023 by the competent authority. 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 buyer's agreement dated 01.10.2014 executed between the parties.
49. 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 the date of revival of the unit i.e., 10.02.2020 till the date of offer of possession plus 2 months, after obtaining the occupation certificate i.e., 26.10.2023.

50. 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. 10.02.2020 till expiry of 2 months from the date of offer of possession 15.11.2023 after obtaining occupation certificate as per provisions of Section 18(1) of the Act read with rule 15 of the rules.

G.II. Direct the respondent to pay compensation of Rs. 25 lacs on account of mental agony and litigation expenses

51. 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions issued by the Authority:

52. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations

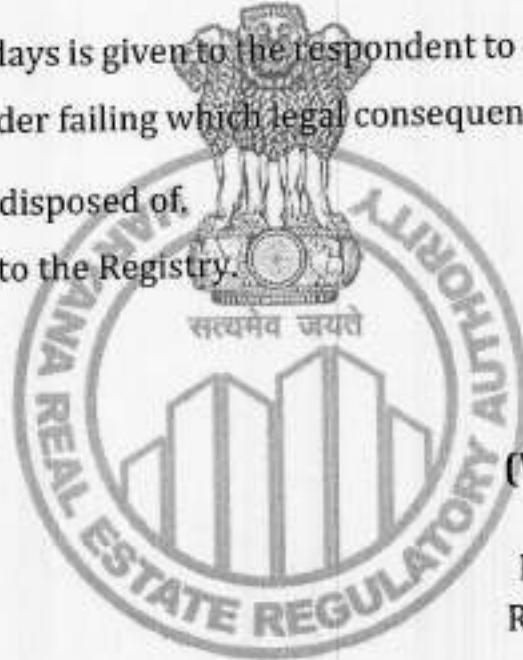
cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondents are directed to pay delay possession interest to the complainant against the paid-up amount of Rs. 35,46,174 at the prescribed rate i.e., 11.10% per annum for every month of delay from the date of revival of unit i.e., 10.02.2020 till expiry of 2 months from the date of offer of possession i.e., 15.11.2023 after obtaining occupation certificate i.e., 26.10.2023.
- ii. 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.

53. Complaint stands disposed of.

54. File be consigned to the Registry.

Dated: 16.01.2024



V-1 - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM