

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

Complaint no. : 5848 of 2022  
Complaint filed on : 23.08.2022  
Date of decision : 07.01.2025

1. Prosenjit Sarkar  
2. Manisha Sarkar  
Both RR/o: The Enclave, The Palm Drive, Tower Q,  
1403, Sector 66, Gurugram.

**Complainants**

Versus

Emaar India Ltd.  
(formerly known as "Emaar MGF Land Ltd.")  
Regd. office at: Emaar MGF Business Park, Mehrauli  
Gurgaon Road, Sector -28, Sikandarpur Chowk,  
Gurugram, Haryana.

**Respondent**

**CORAM:**

Shri Arum Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman  
Member  
Member**

**APPEARANCE:**

Shri Varun Chugh  
Shri J.K.Dang

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

2. The particulars of the project, the details of 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:

S. No.	Particulars	Details
1.	Name of the project	The Enclave at the Palm Drive, Sector 66, Gurugram, Haryana
2.	Project area	37.708 acres
3.	Nature of project	Group housing complex
4.	DTCP license	93 of 2008 dated 12.05.2008 Valid up to 11.05.2020
5.	Name of licensee	Arjun Dev and others
6.	RERA Registration	Registered 24 of 2020 Valid from 10.9.2020 up to 08.08.2021
7.	Allotment letter in favour of original allottee i.e., Mr. Bishwanath Dass and Sunita Dass	19.09.2009 (Page 29 of reply)
8.	Property transferred in favour of complainants herein	12.10.2009 [Page 13 of complaint]
9.	Date of execution of buyer's agreement between the complainants and the respondent herein	07.05.2010 [Page 14 of complaint]
10.	Unit no.	TEN-Q-F-14-03 1920 sq. ft. [Page 18 of complaint]
11.	Possession clause	<b>14. POSSESSION</b> <b>(a) Time of handing over the Possession</b> <i>Subject to terms of this clause and Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc.,</i>

		<p>as prescribed by the Company, the Company proposes to hand over the possession of the unit within 24 months <b>from the start of construction</b> The Apartment Allottee agrees and understands that the Company shall be entitled to a <b>grace period of 6 months, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</b></p> <p>(Emphasis supplied)                  [Page 32 of complaint]</p>
12.	Date of start of construction as per SOA dated 09.06.2018 at page no. 48 of complaint	<b>25.11.2010</b>
13.	Due date of possession	25.05.2013 Note:- Calculated from the start of construction i.e., 25.11.2010 page 48 of the complaint) [Note: 6 months grace period is included]
14.	Total consideration as per statement of account dated 04.11.2022 at page 133 of the reply	Rs.72,55,138/-
15.	Total amount paid by the complainants	Rs.72,32,829/-
16.	Occupation certificate	25.01.2018 [page 140 of reply]
17.	Offer of possession to the complainants	14.03.2018 [page 142 of reply]
18.	Unit handover letter issued in favor of the complainants	11.05.2018 [page 148 of reply]
19.	Conveyance deed executed between the respondent and the complainants herein	30.07.2018 [page 157 of reply ]

**B. Facts of the complaint**

3. The complainants made the following submissions in the complaint:-
- i. That, an apartment no. TEN-Q-F-14-03, admeasuring 1920 sq. ft., was booked by Mr. Bishwanath Dass and Ms. Sunita Dass in the project of the respondent, "The Enclave-The Palm Drive", situated at Sector-66, Gurugram in the year 2009.
  - ii. That, subsequently, in the year 2009 itself, the said unit was purchased by the complainants from Mr. Bishwanath Dass and Ms. Sunita Dass and a unit transfer letter dated 12.10.2009 in the regard was duly issued by the respondent confirming the transfer of the subject apartment in favour of the complainants.
  - iii. That, thereafter, on 07.05.2010, the complainants entered into a builder buyer agreement with the respondent, by virtue of which the respondent allotted apartment no. TEN-Q-F-14-03 (fourteenth floor), admeasuring 1920 Sq. Ft., along with car parking space in the project.
  - iv. That, the respondent had categorically mentioned that the possession of the said apartment would be handed over within 24 months from the commencement of construction i.e. 21.08.2010, with a further grace period of another 6 months in the builder buyer agreement dated 07.05.2010. Also, at the time of transferring the apartment in question, the complainants were further coerced by the respondent to sign affidavits/indemnity cum undertaking in favour of the respondent, wherein the complainants were required to undertake, not to claim or raise any compensation for delay in handing over possession of the property.
  - v. That, the builder buyer agreement and the indemnity cum undertaking are totally one sided, which imposed completely biased terms and



conditions upon the complainants, thereby tilting the balance of power in favour of the respondent. It is manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.5/- per sq. ft., on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.50/- Per sq. ft. and 24% penal interest per annum on the unpaid amount of instalment due to the respondent.

- vi. That, the respondent inordinately delayed in delivery of the possession by 67 months. It is pertinent to mention here that though the possession of the property in question was finally offered on 13.04.2018, but the property got ready for physical possession only on 01.05.2018 as is reflected from the unit handover advice.
- vii. That, the complainants made timely payment of all instalments without any default and only after making the balance payment, which had to be made at the time of offer of possession, they got the property transferred in their name on 30.07.2018.
- viii. That, the respondent had only paid a meagre sum of Rs.2,90,361/- towards the compensation as per the terms of the builder buyer's agreement and has flatly refused to indemnify the complainants as per the regulations of RERA, who sought compensation for the entire period of delay in handing over the possession of the unit.
- ix. That, the respondent had committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the apartment in question and not giving the interest and compensation to the buyers as per the provisions of RERA.

**C. Relief sought by the complainants**

4. The complainants are seeking the following relief:

- (i) Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the possession of the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.
- (ii) Direct the respondent to pay a sum of Rs.50,000/- to the complainants towards the cost of the litigation.

**D. Reply filed by the respondent**

5. The respondent had contested the complaint on the following grounds:
  - i. That, the complainants purchased the unit in question, i.e., TEN-Q-F-14-03, located on the 14<sup>th</sup> floor, in tower/block Q, having tentative super area of 1920 sq. ft. in the project known as "The Enclave", situated at Sector- 65/66, Gurgaon from the original allottees, Bishwanath Dass and Sunita Dass.
  - ii. That, the complainants were aware that the building plans of the tower in which the unit in question is situated, was yet to be approved by the competent authority and that construction of the project would only commence after all the building plans were approved.
  - iii. That, the complainants opted for a payment plan in which the first two instalments were to be paid in a time bound manner while the remaining instalments were construction linked. The complainants agreed to remit the sale consideration for the unit in question on time as per the payment schedule. Accordingly, the builder buyer agreement was executed between them on 05.05.2010.
  - iv. That, the complainants failed to make timely payment of instalments. Consequently, the respondent issued notices and reminders to the complainants for making the balance payment.





- v. That, the respondent registered the project under the Act. The RERA registration no. of the project is 24 of 2020. Thereafter, the respondent completed construction of the complex and made an application to the competent authority for issuance of the occupation certificate on 30.06.2017 and the occupation certificate was issued by the competent authority vide memo no 3486 dated 25.01.2018.
- vi. That, vide letter dated 14.03.2018, the respondent offered possession of the unit to the complainants. The complainants were called upon to remit balance payment and to complete the necessary formalities /documentation necessary for handover of the apartment to them.
- vii. That, the complainants took possession of the unit on 11.05.2018, after admitting that the complainants were fully satisfied with the unit in all respects and that the respondent stood discharged of its obligations upon handover of possession; the Indemnity cum Undertaking for possession was also executed by the complainants. Thereafter, the conveyance deed had also been registered in favour of the complainants on 30.07.2018. Thus, the transaction between the complainants and the respondent stands satisfied.
- viii. That as per clause 14(a) of the builder buyer agreement provides that subject to the allottee having complied with all the terms and conditions of the agreement, and not being in default of the same, possession of the unit would be handed over within 24 months plus grace period of six months, from the date of start of construction. Time period for delivery of possession shall stand be extended on the occurrence of delay for reasons beyond the control of the respondent and on account of time taken by government and statutory authorities in according approvals,



permissions and sanctions, or in the event of default in payment of amounts demanded by the respondent.

- ix. That, the respondent applied for occupation certificate on 30.06.2017 and the same was thereafter issued vide memo bearing no. ZP-308-Vol-I/SD(BS)/2018/3486, dated 25.01.2018. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case.
- x. That, the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities, including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc., and other force majeure circumstances, yet, the Respondent completed the construction of the project, without imposing any cost implications on the complainants and demanding the prices only as and when the construction was being done.
- xi. That, respondent, despite default of several allottees, pursued the development of the project in question and completed the project in question as expeditiously as possible. Although the complainants, being in default of the builder buyer agreement, were not entitled to any compensation in terms of clause 16(c) of the Buyer's Agreement, nevertheless, compensation amounting to Rs.2,90,361/- has been paid to the complainants in accordance with the builder buyer agreement and same was duly accepted by the complainants. Moreover, an amount of Rs.19,604/- was credited as EPR (Early Payment Rebate) to the





complainants. Therefore, the complainants are not entitled to any further compensation/interest from the respondent.

- xii. That, possession of the unit was taken by the complainants on 11.05.2018 and conveyance deed has been registered in favour of the complainants on 30.07.2018. The complaint has been instituted beyond three years from the date of possession and conveyance deed, is barred by limitation and therefore, liable to be dismissed.

**E. Jurisdiction of the authority**

6. 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**

7. 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.

**E.II Subject-matter jurisdiction**

8. Section 11(4)(a) of the Act 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**

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(4) The promoter shall-

- (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.*

9. 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 as per provisions of section 11(4)(a) of the Act 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. Objection regarding the complaint being barred by limitation.**

10. The counsel for the respondent submitted that the complainant has filed the present complaint on 23.08.2022, after execution of conveyance deed on 30.07.2018 i.e., after a lapse of 4 years and 1 month. Therefore, the present complaint is barred by limitation. But the counsel for the complainant submitted that limitation is not applicable qua these proceedings, and submitted a copy of order passed Hon'ble Real Estate Regulatory Authority, Punjab wherein it has been held that the benefits under the Act are not barred by limitation.
11. So far as the issue of limitation is concerned the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016 .However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural Justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights .Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation

to press his rights under normal circumstances. However this shall not apply to the provisions of section 14 where specific period has already been defined.

12. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of *Suo Moto Writ Petition Civil No. 3 of 2020* have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
13. Though both the parties through their respective counsel advanced submissions with regard to the maintainability of the compliant on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, the subject unit was allotted on 19.09.2009, a buyer's agreement in this regard was executed on 07.05.2010. Though the possession of the unit was to be offered on or before 25.11.2012 after completion of the project but the same was offered only on 14.03.2018 after receipt of occupation certificate on 25.01.2018 and ultimately leading to execution of conveyance deed of the same on 30.07.2018. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 30.07.2018. The complainants have filed the present complaint on 23.08.2022 which is 4 years and 24 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 27.02.2023. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

**F.II. Whether signing of unit hand over letter or indemnity-cum-undertaking at the time of possession extinguishes the right of the allottee to claim delay possession charges.**

14. The respondent contended that at the time of taking possession of the subject unit vide unit hand over letter dated 11.05.2018, the complainant had certified himself to be fully satisfied with regard to the measurements, location, direction, developments et cetera of the unit and also admitted and acknowledge that he does not have any claim of any nature whatsoever against the respondent and that upon acceptance of possession, the liabilities and obligations of the respondent as enumerated in the allotment letter/buyer's agreement, stand fully satisfied. The relevant para of the unit handover letter relied upon reads as under:

*"The Allottee, hereby, certifies that he / she has taken over the peaceful and vacant physical possession of the aforesaid Unit after fully satisfying himself / herself with regard to its measurements, location, dimension and development etc. and hereafter the Allottee has no claim of any nature whatsoever against the Company with regard to the size, dimension, area, location and legal status of the aforesaid Home.*

*Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/Agreement executed in favour of the Allottee stand satisfied."*

15. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that the unit handover letter and indemnity cum undertaking executed at the time of taking possession, does not preclude the allottees from exercising their right to claim delay possession charges as per the provisions of the Act.
16. In light of the aforesaid order, the complainant is entitled to delay possession charges as per provisions of the Act despite signing of indemnity at the time of possession or unit handover letter.

**F.III. Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?**

17. In the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.**, the authority has comprehensively dealt with this issue and has held that taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant cannot be deprived of the statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020.**
18. Therefore, in furtherance of **Varun Gupta V/s Emaar MGF Land Ltd. (supra)** and the law laid down by the hon'ble Apex Court in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant cannot be precluded from his right to seek delay possession charges from the respondent-promoter.
- G. Findings on the reliefs sought by the complainants
- G.I Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the possession of the property in question as per provisions of The Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.
19. In the present complaint, the complainants the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act of 2016. Sec. 18(1) proviso reads as under.

**"Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....



*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

18. Clause 14(a) of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

**"14. POSSESSION**

**(a) Time of handing over the Possession**

*"Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the Unit within 24 months from the start of construction. The Allottee(s) agrees and understands that the developer shall be entitled to a grace period of 6 months, for applying and obtaining the occupation certificate in respect of the Complex."*

19. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining occupation certificate in respect of said floor. The construction commenced on 25.11.2010 as per statement of account dated 04.11.2022. The period of 24 months expired on 25.11.2012 and a grace period of 6 months for applying and obtaining the occupation certificate in respect of the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-



*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

20. Therefore, in view of the above judgement, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 25.05.2013 including grace period of 6 months.

21. **Admissibility of delay possession charges at prescribed rate of interest:**

The 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.*

22. 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.
23. 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., 07.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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;"*

25. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter

which is the same as is being granted to the complainant in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 07.05.2010, the possession of the said unit was to be delivered within a period of 24 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 25.05.2013. In the present case, the complainant was offered possession by the respondent on 14.03.2018 after obtaining occupation certificate dated 25.01.2018 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 07.05.2010 executed between the parties.
27. 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 was granted by the competent authority on 25.01.2018. However, the respondent offered the possession of the unit in question to the complainant only on 14.03.2018, so it can be said that the complainant came to know about the occupation

certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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 from the due date of possession till actual handing over of possession or offer of possession plus two months whichever is earlier.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges on the amount paid by them (exclude the amount given by the respondent company with respect to compensation/rebate if any) at prescribed rate of the interest @ 11.10% p.a. w.e.f. 25.05.2013 till 11.05.2018 i.e., expiry of 2 months from the date of offer of possession (14.03.2018) or actual taking over of possession (11.05.2018) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
29. Also, the amount of compensation already paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- G.II. Direct the respondent to pay a sum of Rs. 50,000/- to the complainants towards the cost of the litigation.**



30. The complainant is also 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. Vs. State of UP & Ors.* (supra) 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 of the Authority**

31. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondent is directed to pay the interest at the prescribed rate, i.e., 11.10% per annum for every month of delay on the amount paid by the complainants (exclude the amount given by the respondent company with respect to compensation/rebate if any) from the due date of handing over the possession of the unit, i.e., 25.05.2013 till 11.05.2018 i.e., expiry of 2 months from the date of offer of possession (14.03.2018) or actual taking over of possession (11.05.2018) whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
  - II. Also, the amount of compensation already paid by the respondent to the complainants towards compensation for delay in handing over

possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

III. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

31. Complaint as well as applications, if any, stands disposed off accordingly.
32. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.01.2025

**HARERA**  
**GURUGRAM**