

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

**Complaint no. :** 4596 of 2022  
**Order reserved on :** 10.10.2024  
**Order pronounced on:** 12.12.2024

1. Umesh Mattoo
2. Anita Mattoo

**Complainants**

**R/o:** H-3661, Sector 23, Gurugram, Haryana – 122015

**Versus**

**Adani M2K Projects LLP**

**Regd. office:** GF, Adani House, Plot No. 83, Sector 32,  
Industrial Area, Gurugram, Haryana – 122001

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Harsh Gokhale (Advocate)  
Shri Prashant Sheoran (Advocate)

**Complainants  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

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

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession and



the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Oyster Grande
2.	Project location	Sector 102/102, Village Khedki, Gurugram, Haryana
3.	Project type	Group Housing Project
4.	Allotment of unit	Not provided on record
5.	Unit no.	B-504, 5 <sup>th</sup> floor, Tower- B (As per page no. 80 of complaint)
6.	Unit area admeasuring	2579 sq. ft. (super area) (As per page no. 80 of complaint)
7.	Date of apartment buyer's agreement	26.06.2012 (As per page no. 33 of complaint)
8.	Possession clause	<p><b>As per as per Article 5(A)(i)</b></p> <p><i>Subject to the compliance of all terms and conditions of this agreement by the allottee(s) including the timely payment of the sale consideration and other charges and all other applicable taxes/levies/interests/penalties, etc., the developer based on its present plans and estimates and subject to all just exceptions <b>will endeavor to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months</b>, subject to force majeure events (as defined herein) which shall include events/ circumstances or combination thereof which may prevent / obstruct / hinder / delay the construction and development of the said project/complex.</i></p> <p>(As per page no. 55 of complaint)</p>
9.	Date of commencement of construction	Not provided on record



10.	Due date of possession	25.12.2017 (As claimed by the complainant in para 6, page 13 of complaint and page 2 of the reply by the respondent)
11.	Total sale consideration	Rs.1,78,26,636/- (As per account statement dated 27.01.2020 on page no. 45 of reply)
12.	Amount paid by the complainants	Rs.1,77,95,161/- (As per account statement dated 27.01.2020 on page no. 45 of reply)
13.	Occupation certificate	20.12.2017 (As per page 41 of the reply)
14.	Offer of possession	25.01.2018 (As per page no. 39 of reply)
15.	Possession letter dated	22.12.2019 (As per page 80 of the complaint)
16.	Conveyance deed	11.02.2020 (As per page no. 23 of reply)
17.	Legal notice dated	10.11.2020 (As per page no. 109 of complaint)

**B. Facts of the complaint:**

- The Respondent had published advertisements of the Oyster Grande Project in Sector 102, Dwarka Expressway, Gurugram, Haryana (hereinafter referred as 'Project') and invited applications for allotment of the residential apartments. The respondent assured the complainants that they are in process of developing the project and the said project will be ready for possession within 48 months.
- On the basis of such representation of the respondents, the complainants applied for allotment of an apartment and in turn was allotted apartment No.



B-504 on Fifth Floor, having tentative area of 1861 sq. ft. for a total sale consideration of Rs. 1,62,28,479/-.

5. The complainants and the respondent entered into the apartment buyer's agreement vide dated 26.06.2013 (hereinafter referred as 'said Agreement'), in which the complainants are joint allottees and owners of the apartment unit No. B-504, Oyster Grande, Sector 102/102A, Gurugram along with share in common areas, easement rights, other ancillary rights, amenities and facilities (hereinafter referred as 'said Premises'). It is submitted that Article 5 (A) of the said agreement clearly states that the project will be ready for possession within 48 months from the date of execution of the said agreement or from the date of commencement of construction whichever is later with grace period of six months. The said period of 48 months expired on 25.06.2017 and the grace period of 6 months expired on 25.12.2017 from the date of signing the said agreement.
6. The payment plan agreed between the respondent and the complainants was a Construction Linked Instalment Plan, wherein certain considerable initial payments are made to the respondent within 3-4 months and remainder in instalments as and when certain levels of construction are achieved or initiated by the respondent.
7. The complainants had already paid a sum of Rs. 1,77,70,622 including taxes which are of Rs. 15,42,143. It is submitted that the complainants had paid the last instalment on 12.02.2018 to the respondent. However, till date, on account of the mismanagement, negligence and callous attitude of the respondent, the respondent has been unable to complete the construction and provide possession of the premises in habitable state.
8. The respondent had informed the complainants that Town and Country Planning Department, Haryana vide memo No. ZP-797/SD(BS)/2017/33011 had issued an Occupancy Certificate vide dated 20.12.2017 to the complainants.

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It is submitted that a Right to Information application bearing No. 154373374 dated 02.08.2018 was filed with regard to sanction of sewer connection for the project. It is pertinent to mention that the response dated 07.08.2018 from Executive Engineer (HSVP, Division No. V, Gurugram) to the RTI application stated that the Project was not sanctioned with any sewer connection. It is further stated in the response that no application was received for sewer connection in the project.

9. However, as per the response dated 08.08.2018 of the RTI Application bearing 154373374, the Executive Engineer has stated that no application for sewerage and drainage connection was received by the concerned Authority for the said project. It is pertinent to mention that as per Article 5(A)(viii) of the said agreement, the said premises were required to be in a habitable state when electricity water connection, sewerage and drain connection will be provided. It is submitted that the Respondent didn't fulfill obligation as per the said agreement and tried to handover possession of the said premises before completion of construction and the said premises is not in habitable state.
10. On 19.05.2019, the complainants had visited respondent's office at the project for taking over possession of the said premises. However, upon inspection of the said premises, the complainants were in utter shock to notice discrepancies and defects in the construction. It is pertinent to mention that the complainants orally pointed out the damage and defects in construction to the respondent. It is submitted that the complainants as a result didn't take possession of the said premises on that day. However, the respondent had previously stated in their email communication that they were ready to handover possession of the said premises on 11.09.2018 to the complainants, and on several email communication they tried to handover the possession of the said premises in unhabitable state to the complainants. However, till date the respondent were not able to rectify defects and issues raised by the complainants.



11. On 26.11.2019, the complainants again visited the said premises for inspection. It is submitted that the complainants were not satisfied with the construction, therefore, the complainants again informed the respondent about certain damage and defects which were necessary to be fixed before handing over the possession. That the complainants vide email dated 05.12.2019 informed the respondent about the damage and defects on the said premises and attached photographs as well.
12. The respondent sent email vide dated 13.12.2019, to the complainants addressing all the pending discrepancies in the construction and thereby offered possession of the said premises. It is pertinent to mention that the complainants inspected the said premises on 22.12.2019 and was utterly shocked to have found out that the said premises are not in consonance with the said agreement and no rectifications were made. That the complainants were left with no other option but to take possession of the said premises under protest despite the discrepancies and defects in the construction. That the respondents provided a possession letter to the complainants for the said premises on 22.12.2019. That the complainant responded to the issuance of the possession letter vide letter dated 22.12.2019 to the respondent and stated that they are taking possession of the said premises under protest.
13. In an unrelated proceeding, the National Anti-Profitteering Authority vide order dated 18.12.2019 in the matter of Amit Tandon v. M/s Adani M2K Projects LLP, the said authority directed respondent to pass on the benefit of input tax credit which was already availed by the respondent. It was further directed by the Authority that respondent is liable to refund the wrongly profiteered amount along with interest of 18% per annum to all the home buyers which includes the complainants.
14. The complainants demanded for the profiteered amount which the respondent was liable to pay along with 18% interest per annum. It is submitted that the



Respondent refunded a sum of Rs. 24,540/- vide demand draft bearing No. 507196 dated 07.08.2020. That the complainants estimate for the refund amount was much higher than the refunded amount, therefore, the complainants requested on several occasion to the respondent for computation details of profiteered amount and calculation of interest @18% per annum. However, the respondent paid no heed to such request.

15. The complainants also issued a legal notice dated 10.11.2020 to the respondent and it is submitted that the complainants have stated all his grievances to the respondents. However, till date no reply was received by the complainants and no action were taken by the respondent to resolve the issues faced by the complainants.

16. The due date of possession was 25.12.2017 (including grace period). That as per Article 5 of the said agreement state that the possession of the said premises was to be handed over within 48 months + 6 months grace period, from the date of signing of the said agreement. Also, the promoted had been engaged in illegal practices. This is also violation of section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Rules, 2017.

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

17. The complainants have sought the following relief(s):
- Direct the respondent to pay calculated delay amount INR 8,51,070/- towards liquidated interest to the complainants.
  - Direct the respondent to pay Rs. 3,00,000/- toward damages towards handover possession of the said premises which is unfit for habitation.
  - Direct the respondent to pay a sum of INR 1,00,000/- cost of litigation.
18. On the date of hearing, the authority explained to the respondent/ promoter about the contravention as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

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19. The respondent launched a residential project under the name and style of "Oyster Grande" in Sector 102/102A in Gurugram, Haryana ("said project"), wherein the complainants approached the respondent for allotment of an apartment in the said prestigious project of the respondent. Thereafter, the complainants were allotted an apartment bearing No. B-504 in the "Oyster Grande" project vide respondent's provisional allotment letter dated 25.01.2013.
20. The said unit had been allotted to the complainant for a total sale consideration of Rs. 16,228,479/- plus taxes. That complainant out of his own accord had chosen to make the payment of sale consideration of the said unit by way of construction linked plan attached with the apartment buyer agreement executed between the parties on 26-06-2013. That complainants also annexed apartment buyer agreement. However, since the agreement attached by complainants is incomplete and illegible, a complete agreement is again attached herein as annexure R3. It is submitted that even most of the documents annexed/sent by the complainants are illegible and faded, thus respondent is entitled for clear copy and additional reply if necessary.
21. Admittedly the apartment buyer agreement executed between the parties on 26-06-2013. That the said agreement was signed by the complainants after completely understanding and after agreeing with the terms and conditions of the apartment buyer agreement. That as per the terms and conditions of apartment buyer agreement, the complainants are under a bounden duty to pay the amount as per the payment plan within time period without making any delay.
22. As per clause 5(a) of the apartment buyer agreement it was agreed that the developer will endeavor to complete the construction of the said apartment within a period of 48 months from the date of execution of this agreement. It is further submitted that another period of 6 months was also liable to be



included as grace period. Thus, if the time period of delayed payment by complainants is not calculated (though the delayed payments by the complainants have to be considered in context of completion of the unit, as per the terms of the agreement) even then the tower in question was constructed much prior to the agreed time framed. As per above noted clause the construction of the tower in question needed to be completed up to 25.12.2017. Whereas, the construction was completed much prior to Dec 2017. It is submitted that on 20.12.2017 occupation certificate was granted by the concerned department.

23. As per the agreement the allottee shall only be entitled for possession only after payment of all the stages in timely manner as mentioned in the payment plan annexed with the apartment buyer agreement. However, in the present case complainants miserably failed to pay the installments on time and since day one complainants kept on defaulting in payment.
24. That complainants never made payment on time and thus the time period of delayed payment shall also be included while calculating date of possession. Thus, respondent in present case has offered possession after obtaining OC much prior to date of actual delivery of possession and if complainants themselves do not take possession then respondent cannot be made liable for the same. It is submitted that after obtaining occupation certificate, respondent offered possession of the unit in question on 25-01-2018.
25. It is clear that the complainants defaulted at many stages in payment of the installments in his own chosen plan, and did not pay any heed to the communications and notices of the respondent. It is submitted that the respondent was not at fault at any stage of the dealings which took place between the respondent and the complainants.
26. The claims made and reliefs claimed by the complainants are barred by law of limitation and estoppel. It is submitted that in the present case possession has



already been taken by complainants & conveyance deed has already been executed on 11-02-2020. That after present complaint has been filed after 2 years of execution of conveyance deed and thus clearly an afterthought. That without prejudiced to the rights of respondent and without admitting claim of complainants, it is submitted that since conveyance deed has already been executed thus matter has finally been settled and present complaint is not maintainable at this stage. Moreover, by way of present complainants claimed compensation of Rs. 9,00,000, which itself is not maintainable before Hon'ble Authority in view of Newtech judgment passed by Hon'ble supreme court and further claimed an amount of Rs. 8,51,070 as delayed possession charges. That even the delayed possession charges are not maintainable in view of following facts and circumstances.

27. The complainants themselves admitted the fact that date of possession was 25-12-2017 and respondent has obtained occupation certificate on 20-12-2017 of complainants. Thus, as per complainants' own admission there left no scope for delayed possession charges. That the fact which was concealed by complainants that after obtaining OC respondent immediately sent offer of possession to the complainants vide letter dated 25-01-2018 and only after delay of more than 2 years approx. complainant took possession on 22-12-2019, citing baseless reasons.
28. Complainants have attached a legal notice along with their complaint whereby they alleged that occupation certificate obtained by respondent is sham document and is void. It is submitted that complainants have no right to challenge occupation certificate before RERA, moreover it is most respectfully submitted that even Hon'ble authority has no power to adjudicate upon legality of occupation certificate. It is submitted that Occupation certificate was granted by DTCP after due verification and grant of occupation certificate is in itself proof that units are ready for occupation and are in habitable condition.



29. That besides the dismissal of the present complaint on the grounds of falsehood, vagueness, suppression and concealment of material facts from this Hon'ble Authority, at the very outset, the complaint is liable to be dismissed.
30. 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 basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the Authority:**

31. 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**

32. 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**

33. 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.*

34. 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 Objection regarding the delay in payment.**

35. The respondent raised an objection regarding delay in payment by many allottees is totally invalid because the allottee herein have already paid the amount of Rs. 1,77,95,161/- against the total sale consideration of Rs. 1,78,26,636/- to the respondent. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. As per the payment plan 99% of the sale consideration has already been paid by the complainants till date. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainants have paid all the instalments as per payment plan duly agreed upon by the complainants while signing the agreement. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

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

**G.I Direct the respondent to pay calculated delay amount INR 8,51,070/- towards liquidated interest to the complainants.**

*Handwritten signature*



36. The complainants were allotted a residential unit no.-B-504 on 5<sup>th</sup> floor in Tower-B admeasuring a carpet area of 2579 sq. ft. Thereafter, the respondent and the complainants entered into buyer's agreement on 06.06.2012 and as per clause 5(A)(i) of the said agreement the respondent undertook to deliver the possession of the unit to the complainants within 48 months from the date of execution of the agreement with a grace period of six months. The due date of possession as per clause 5(A)(i) of buyer's agreement comes to be 25.12.2017 which is admitted by both the parties (in para 6 at page 13 of complaint and page 2 of the reply by the respondent). The respondent has stated in it reply that the construction of the project was completed within promised time period and there was no alleged defect in the construction.

37. Upon review of the relevant documents, it is evident that the Occupation Certificate (OC) for the subject project was duly issued by the competent authority on 20.12.2017. The stipulated date for possession was 25.12.2017, and the respondent extended the offer of possession to the complainants on 25.01.2018. The offer of possession was made one month subsequent to the issuance of the OC. This one-month period between the issuance of the OC and the offer of possession does not constitute a significant delay.

38. The authority is of the view that there has been no delay on the part of the respondent in completing the project. Hence, the relief of the complainants regarding delayed possession charges does not hold any substance and is hereby declined.

**G.II. Direct the respondent to pay Rs. 3,00,000/- towards damages towards handover possession of said premises and Rs.1,00,000/- towards cost of litigation agony and litigation expenses**

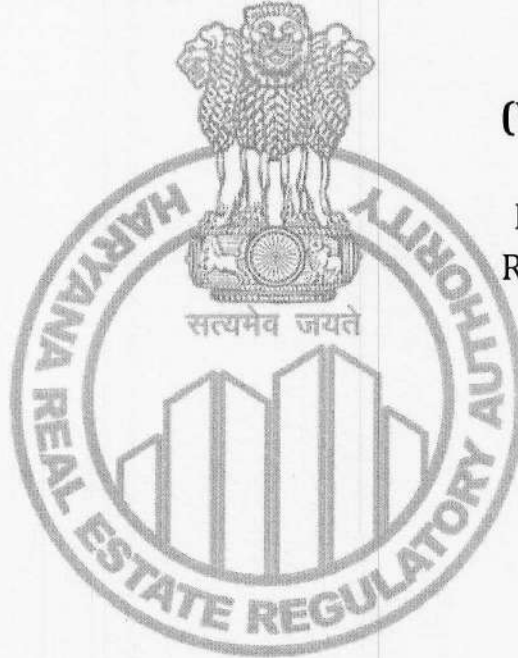
39. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357*), has held that an allottee is entitled to claim




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.

40. Complaint stands disposed of.
41. File be consigned to the Registry.

**Dated: 12.12.2024**



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

**HARERA**  
**GURUGRAM**