

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

**Complaint no.:** 19 of 2024  
**Date of decision:-** 22.01.2025

1. Rashmi Agarwal
2. Rajan Jain

**Both R/o:** - Flat no. 403, Septet (s7), Godrej Prime,  
Shell Colony, Chembur, Mumbai-400071.

**Complainants**

Versus

M/s. Assotech Moonshine Urban Development  
Pvt. Ltd.

**Regd. office:** 148-F, Pocket-IV, Mayor Vihar,  
Phase-I, Delhi-110091.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Rajan Gupta (Advocate)

**Complainants**

Vaibhav Kataria (Advocate)

**Respondent**

**ORDER**

1. The present complaint dated 18.01.2024 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in

short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Dhankot, Gurugram.
2.	Nature of the project	Group Housing project
3.	Acres	12.062 acres
4.	DTCP License No.	95 of 2011 dated 28.10.2011 valid upto 27.10.2024
5.	Name of licensee	1. Uppal Housing Pvt. Ltd. 2. Moonshine Urban Developers Pvt Ltd
6.	HARERA Registered	Registered
7.	RERA Registration No.	83 of 2017 dated 23.08.2017 valid upto 22.08.2023
8.	Allotment letter	24.12.2013

	[Note: in favor the original allottees ]	(As on page no. 14 of complaint)
9.	Endorsement letter in favor of complainants	30.06.2014
10.	Unit no.	E-703, Type-2BHK, Floor-7 <sup>th</sup> (As on page no. 14 of complaint)
11.	Super area	1365 sq.ft (As on page no. 14 of complaint)
12.	Possession clause	<b>Clause 19(I),</b> <i>The possession of the apartment shall be delivered to the allottee(s) by the Company within <b>42 months from the date of allotment</b> subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.</i>
13.	Grace period	<b>Clause 19(II),</b> <i>In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and <b>further within a grace period of six months,</b> the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within</i>

		<p><i>the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession</i></p> <p><i>[Emphasis supplied]</i></p>
14.	Possession date	<p><b>Clause 57</b></p> <p><b>Possession Date</b></p> <p><i>The apartment will be delivered to the allottee within 42 months from the issue of this allotment letter. No delayed charges shall be payable within he grace period.</i></p> <p><i>[Emphasis supplied]</i></p>
15.	Due date of possession	<p>24.12.2017</p> <p>[calculated 42 months plus 6 months grace period]</p>
16.	Sale consideration	<p>Rs.70,51,735/-</p> <p>(As on page no. 14 of complaint)</p>
17.	Total amount paid by the complainants	<p>Rs.69,15,395/-</p> <p>(As per applicant ledger at page no. 31 of complaint)</p>
18.	Occupation certificate	<p>28.08.2023</p> <p>(As on page no. 154 of reply)</p>
19.	Offer of possession	<p>13.10.2023</p> <p>(As on page no. 156 of complaint)</p>



**B. Facts of the complaint:**

3. The complainants made the following submissions in the complaint:
- I. That the respondent launched a Group Housing Colony known as "Assotech Blith" in Sector-99, Gurugram-Haryana in the year 2012. That the original allottee i.e., Mr. Sarabjeet Singh booked a residential apartment in the above-mentioned project and the respondent vide allotment letter dated 24.12.2013, allotted one flat bearing no. E-703, 7<sup>th</sup> floor, super area admeasuring 1365 sq. ft. in the project. That the total sale consideration of the said apartment was Rs.70,51,735/-.
  - II. That the original allottee transferred the said property in the name of complainants and the same was duly endorsed in favour of complainants vide endorsement letter dated 30.06.2014. As per Clause 19 (I) & 57 of the allotment letter, the respondent company assured the complainant that the physical possession of the said apartment would be handed over to the complainants within 42 months from the date of issue of allotment letter i.e. by 24.06.2017 and in case of delay respondent will pay late possession charges.
  - III. That the complainants have already made payment of Rs.69,15,395/- as per the demand raised by the respondent but the respondent failed to deliver the possession as promised. However, it is pertinent to mention here that now the possession of the said unit has been offered by the respondent on 13.10.2023.
  - IV. That complainants have gone through immense mental agony, stress and harassment because of this huge delay on the part of



respondent in handing-over the possession of the apartment. The complainants had also asked the respondent time and again to pay delayed possession charges at the same rate of interest i.e. 18 % which the respondent is charging from the complainants in case of delay payment on the part of payment default by the complainants. However, the respondent refused to listen to the legitimate demand of the complainants and refused to pay delay possession charges.

- V. That since the respondent failed to fulfil its promise to deliver the project on 24.06.2017, the complainant is entitled to just compensation and interest for every month of delay w.e.f. 24.06.2017 till actual offer of possession.

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

4. The complainants have sought following relief(s):
- Direct the respondent to pay the interest at prescribed rate for every month of delay on the amount paid by the complainants from due date of possession i.e. 24.06.2017 till actual offer of possession.
  - Direct the respondent to handover possession of the unit to the complainants and dues if any, on part of the complainants be deducted from the delay possession charges.
  - Direct the respondent to execute conveyance deed and not to charge holding charges and anything from the complainants which are against the law.
  - Direct the respondent to pay litigation charges of Rs.1,00,000/- to the complainants.

**D. Reply by respondent:**

5. The respondent by way of written reply made following submissions.
- I. That the respondent is an associate company of M/s Assotech Limited, which is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it comprising of residential, commercial / IT Parks, retail, etc. The respondent was incorporated on 19.08.2006 and was initially promoted by Uppal Housing Private Limited and in the year 2012, was acquired by M/s Assotech Limited by execution of share purchase agreement dated 19.01.2012 and the registered address and corporate address of the respondent was changed to that of the parent company, i.e., M/s Assotech Limited, thus the registered address and corporate address of the respondent and M/s Assotech Limited were same.
  - II. The respondent on 20.01.2012 entered into an investment agreement with M/s Assotech Limited and FDI Investors, Mallika SA Investments LLC for the development of the residential project and launched the residential project known as 'Assotech Blith', Sector - 99, Gurugram which has been conceptualised and promoted by the respondent. That the said project was spread over an area of 12.062 acres and consisted of 560 dwelling unit in 7 towers namely, A, B, C, D, E, F, G, 23 Villas and 10 shops.
  - III. That the original allottee i.e., Mr. Sarabjeet Singh in order to buy a property in the upcoming part of Gurgaon, acting through his property dealer had approached the respondent and after making detailed and elaborate enquiries with regard to all aspects.



- IV. That being satisfied with all the aspects of the project, the original allottee proceeded to book an apartment in the said project and was allotted an apartment bearing no. E - 703 located on the seventh floor of Tower -E of the project admeasuring 1365 sq. ft. (126.81 sq. mtr.) vide allotment letter dated 24.12.2013.
- V. That later on, the allotment was transferred in the name of the complainants on 30.06.2014. The respondent had to handover the possession within 42 months starting from 30.06.2014 subject to force-majeure in terms of clause 19 of allotment letter. That the respondent was supposed to hand over possession of the apartment to the complainants within a period of 42 months starting from the date of the allotment letter alongwith a grace period of six months to complete the construction.
- VI. That the said project was going at a very great pace and was right at schedule, if not at a pace faster than the schedule till the year 2015. However, in the mid of 2015, the Contractor Company faced a litigation in the Hon'ble High Court of Delhi and on 08.02.2016 (before the due date of possession of 23.06.2017), the Hon'ble High Court of Delhi put the Contractor Company into Provisional Liquidation vide its order dated 08.02.2016 in Company Petition No. 357 of 2015. The Hon'ble High Court of Delhi vide the same order also appointed the Official Liquidator (hereinafter referred to as 'OL') attached to the court as the Provisional Liquidator and the rights and authority of the Board of Directors of the Contractor Company were taken by the OL. Now, the Directors became Ex-Directors and Ex-Management of the Contractor Company have to work under the supervision of the Provisional Liquidator / OL so





appointed by the Hon'ble High Court of Delhi and thus the directors did not have any power to take any action. It is also pertinent to mention here that vide same order, the Hon'ble High Court of Delhi directed the Official Liquidator so appointed to seal the premises of the contractor company and as the registered address and the corporate address of the respondent was same as that of the contractor company, due to this very reason the office of the respondent was also sealed by the Hon'ble High Court of Delhi. Hence, due to the Provisional Liquidation of the Contractor Company and order of the Hon'ble High Court of Delhi, the construction work of the project got interrupted.

- VII. That in terms of the order dated 08.02.2016, the management of the contractor company was taken over by the Official Provisional Liquidator and the construction of the project was also taken over by the Official Provisional Liquidator, however, the same also got interrupted on account of non-payment by the various allottees towards the demand raised by the respondent for the construction of the project. It is pertinent to mention here that the complainants were a defaulter since June, 2014. It is also pertinent to mention here that the basic price of the unit is Rs.59,22,733/- out of which a sum of Rs.4,44,020/- is due and payable by the complainants and as such the complainants has only paid a sum of Rs.54,78,713/- towards the unit basic price.
- VIII. That in order to know about the financial health of the contractor company, the Hon'ble High Court of Delhi passed an order for conducting the forensic audit of the contractor company. In the report filed by the auditor, the financial statement of the contractor



company transpired that an amount of Rs.228.45 crores has been recoverable by the contractor company to its associate/subsidiary companies which has been paid to the associates/subsidiary companies as loans and/or advances. Thus, the Hon'ble High Court vide order dated 21.01.2019, ordered for recovery of such loans and/or advances even though the same were not on that day. It is pertinent to mention here that as per the forensic audit report and in terms of the Hon'ble High Court of Delhi, the respondent was supposed to return a sum of Rs.98.62 crores to the contractor company which it had received as loan and/or advances. It is also not out of place to mention here that order of recovery of Rs.98.62 crores, which were not even due at that time as the same is in form of security (Equity and Debentures), by the Hon'ble High Court of Delhi pushed the respondent into severe financial stress, thereby leaving the respondent with no money and no contractor to develop the said project.

- IX. That as the whole view point of the Companies Act, 1956 was to keep the companies as the going concern so as to keep the corporate afloat as a going concern, a revival plan was filed before the Hon'ble High Court of Delhi so as to revive the contractor company.
- X. That on 11.02.2019, in view of the revival plan, the Hon'ble High Court appointed a court commissioner - Mr. Justice N.K. Mody (Retd.) to supervise the affairs of the contractor company as a whole and the same were kept on priority for the completion in terms of the order of Hon'ble High Court of Delhi of even date. In addition to the order of the Hon'ble High Court of Delhi keeping the



aforesaid projects on priority, the allottees of the project were not making the payment towards the demands already raised. Now, due to this very reason the development of the project was again interrupted.

- XI. In addition to the above-mentioned orders of the Hon'ble High Court of Delhi, the respondent and the contractor company had to also comply with various orders / directions / guidelines issued from time to time by the Hon'ble Supreme Court of India, Environment Pollution (Prevention and Control) Authority, Hon'ble National Green Tribunal, New Delhi vide which the aforesaid Courts and Authorities ordered / directed for a complete ban on the construction activities in the National Capital Region (NCR), which include the district of Gurugram for control of air pollution. On account of such complete ban on the construction, around 74 days were such days on which there was a complete ban.
- XII. That the development of the project took another massive hit on account of the COVID - 19 pandemic which resulted in a nation wide lockdown starting from 25<sup>th</sup> March, 2020. That upon revival of the project, the respondent started the construction in full swing and applied for the issuance of the Occupation Certificate on 12.04.2021, The respondent has already received Occupation Certificate for the unit of the complainant on 28.08.2023 and the respondent offered the possession to the complainants vide its letter dated 13.10.2023. It is pertinent to mention here that the respondent is entitled to interest towards late payment charges on a outstanding dues of Rs.4,44,020/-. In terms of the clause 19 of the

allotment letter, the date of handing over of the possession of the unit is 10.05.2023 and the unit was offered to the complainants on 13.10.2023.

6. 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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

7. 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**

8. 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 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**

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

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

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

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on objections raised by the respondent**

**F.1 Objection regarding delay due to force majeure circumstances**

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, institution of liquidation proceedings against the contractor company i.e. M/s. Athena Limited and appointment of official liquidator, shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking

into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 19 (I) & 19(II) of allotment which comes out to be 24.12.2017. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

12. The respondent further alleged that due to litigation proceedings going on against the contractor company, 'Assotech Limited" in the Delhi High Court vide Co. petition no. 357 of 2015 in the mid of year 2015, process of provisional liquidation has been initiated against Assotech Limited. Due to appointment of O.L., office of respondent company was sealed, and various restrictions were levied, due to which construction of the project got affected.
13. But it is pertinent to note here that neither the complainants are party to such contract nor the liquidation proceedings are binding on them. Hence, there was no privity of contract between the contractor company and the complainants. Moreover, there is no order placed on record by the respondent-company, wherein the period of liquidation proceedings has been declared as zero- period. Hence, the plea of the

respondent on account of delay in completion due to initiation of liquidation proceeding is not tenable.

14. As far as the delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

15. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over within 42 months from date of execution of allotment along with grace period of 6 months which comes out to be 24.12.2017 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.



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

**G.I Direct the respondent to pay interest on the delayed possession from the due date of possession till the actual handover of possession of the unit.**

**G.II. Direct the respondent to handover possession of the unit to the complainants and dues if any, be deducted from the delay possession charges.**

16. The respondent was legally obligated as per the allotment letter for delivering possession of the unit on time and the complainants were legally obligated to make the payments on time. In lieu of the payment plan, the complainants were required to release payments on the accomplishment of certain milestones. The due date of delivery of possession was 24.12.2017, but the respondent failed to offer possession of the unit on time. The complainants from time to time have inquired the respondent about the construction status of the project but their queries remained unanswered.
17. In the present complaint, the complainants intend to continue with the project and are seeking possession and delay possession charges along with interest on the amount paid. 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.

***"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."*

19. Clause 19 of the allotment letter provides for handing over of possession and is reproduced below:

**Clause 19(I),**

*The possession of the apartment shall be delivered to the allottee(s) by the company within **42 months from the date of allotment** subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.*

**Clause 19(II),**

*In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and **further within a grace period of six months**, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all instalments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession.*

20. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from date of execution of allotment along with grace period of 6 months which comes out to be 24.12.2017. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.
21. **Admissibility of delay possession charges at prescribed rate of interest:** 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."*

23. 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.
24. 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., 22.01.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. 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;"*

26. 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 the complainants in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made regarding contravention of 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 19(1) of the allotment letter executed between the parties on 24.12.2013, the possession of the subject apartment was to be delivered within 42 months from the date of allotment. Due date of possession is calculated from the date of execution of allotment letter i.e., 29.09.2012. The period of 42 months expired on 29.03.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 29.09.2016. The unit was endorsed in favour of the complainants from the erstwhile allottees on 30.06.2014 which is prior to the due date of possession. The respondent has offered the possession of the subject apartment to the complainants on 13.10.2023 after receiving the occupation certificate from the concerned authorities on 28.08.2023, which is much delayed than the due date of possession



of the unit. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

28. The complainants have requested that delayed possession charges be granted till the unit is officially handed over, as it is not yet ready for occupancy. The Authority after taking into consideration the documents and the submissions made by the complainants, is of the view that the Occupation Certificate in respect of the subject unit has been granted to the respondent by the competent authorities on 28.08.2023, which construes that the unit is fit for occupation.
30. 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 28.08.2023. The respondent offered the possession of the unit in question to the complainants only on 13.10.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. 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 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.

31. 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 complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 24.12.2017 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, 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. The respondent is directed to handover physical possession of the unit to the complainants within a period of 30 days from the date of this order, if not already handed over.

**G.III. Direct the respondent to execute the Conveyance Deed in favour of the complainants and not charge holding charges and anyother charges which are against the law.**

32. The respondent has already obtained occupation certificate from the concerned authorities on 28.08.2023 and offered possession of the unit to the complainants on 22.11.2023. As per Section-17 of the Act, 2016 the respondent is under an obligation to execute a registered conveyance deed in favour of the complainants within a period of three months from the date of issuance of occupation certificate. Thus, the respondent is directed to execute the conveyance deed in favour of the respondent within a period of sixty days from the date of this order.

33. The respondent shall not charge anything from the complainants which is not part of agreement. However, holding charges shall not be charged by the promoters at any point of time even after being



part of the agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

**G.IV. Direct the respondent to pay a sum of Rs.1,00,000/- to the complainants towards the cost of litigation.**

33. The complainants are seeking the above mentioned relief w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions 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 from due date of possession i.e., 24.12.2017 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.



- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent is directed to handover possession of the unit within 30 days of this order, if not already handed over.
- iv. The rate of interest chargeable from the allottees/complainants by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to execute the conveyance deed in favor of the complainants within a period of sixty months from the date of this order.
- vi. The respondent shall not charge anything from the complainants which is not the part of the agreement.
35. Complaint stands disposed of.
36. File be consigned to registry.

**HARERA**  
**GURUGRAM**

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 22.01.2025