

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

Complaint no. : 837 of 2022
Date of order : 29.01.2025

Garima Goyal
R/o: Flat no.503, Sheeba Apartment,
Sector-28, Gurgaon-122009.

Complainant

Versus

M/s Conscient infrastructure Pvt. Ltd.
Office at: - Floor-10th, Tower-D, Global Business
Park, MG Road, Gurugram-122002.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:

Rajeev Kumar Khare (Advocate)
Namitha Marianne Mathews, K P Singh
Poorva Pant, Pragalb Bhardwaj
Pulkit Malhotra, Shayon Chakrabarty, Kuldeep
Pandey (Advocates)

Complainant

Respondent

ORDER

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



11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details		
1.	Name of the project	"Conscient One", Sector 109, Gurugram Haryana		
2.	Project Area	Not Mentioned		
3.	Nature of the project	Serviced Unit		
4.	DTCP License no. & validity status	102 of 2008 dated 15.05.2008 upto 14.5.2022	83 of 2014 dated 09.08.2014 upto 08.08.201	25 of 2019 dated 25.02.2019 upto 24.02.2022
5.	Name of Licensee	Shri maya Buildcon Pvt. Ltd and 5 others	Shiv Shakti Estate Pvt. Ltd.	Shri maya Buildcon Pvt. Ltd.
6.	Acres	8.24	0.16	0.2764
7.	RERA Registered / not registered	GGM/308/40/2019/02 DATED 16.01.2019 Valid till 30.04.2021		
8.	Unit no.	1204 Block C 12 TH floor (Page no. 24 of complaint)		
9.	Unit admeasuring	595sq.ft. [Note: super area reduced from 595 sq. ft. to 565 sq.ft.]		

		(Page no. 24 of complaint)
10.	Application Form	25.09.2014 (As on page no.42 of reply)
11.	Date of execution of buyer's agreement	29.05.2015 (As on page no. 21 of complaint)
12.	Possession clause	8.1 8.1 That the company shall, under normal circumstances, complete the construction of block in which the said service suite is to be located within a period of 42 months with the grace period of six months and subject to force majeure from the date of execution of this agreement or start of construction of the block wherein the said service suit is located (whichever is later) in accordance with the said approved plans (Emphasis supplied).
13.	Due date of delivery of possession	29.05.2019 (Calculated 42 months from date of agreement plus 6 months)
14.	Sale consideration	Rs.52,79,688/- [Earlier] (As per S.O.A dated 02.02.2022 on page no. 56 of complaint) Rs.48,88,435/- [Now] (As per page no.2 of the written submission of the respondent) Note: Area of the unit was reduced from 595 sq.ft. to 565 sq.ft. and thus the sale consideration stood revised
15.	Total amount paid by the complainant	Rs.38,50,706/- (As per S.O.A dated 02.02.2022 on page no. 56 of complaint)

16.	Occupation certificate	19.02.2021 (Annexure R 5 page 65 of reply))
17.	Offer of possession	19.03.2021 (Annexure 3 page 57 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent offered a "serviced suite unit" to the complainant, bearing no. 1204 on 12th Floor, admeasuring 595 square foot in Block C, in the commercial colony, 'Conscient One', located at Sector 109, Gurgaon, Haryana, for a total sale consideration of Rs.50,81,391/-.
- II. That the complainant was enticed into booking the said property on various false representations aimed primarily at causing unlawful loss to the complainant and unlawful gains to the respondent. The complainant booked the unit under the payment plan as annexed on page no. 35 of the agreement. The complainant booked the unit and paid the booking amount of Rs.3,00,000/- on 25.09.2014.
- III. The complainant was shown a brochure which indicated that the area of unit booked by her was 595 sq.ft. no carpet area was mentioned and any ordinary buyer would believe that the indicated area is carpet area. Further, the respondent promised that the unit would be delivered in 3 years' time.
- IV. That the complainant has paid Rs.18,38,755/- to the respondent. Both the parties entered into the Buyer's Agreement on 29.05.2015. The Agreement was completely one sided, designed to promote and protect the respondent's unlawful interests while neglecting the allottee's rights and interests. That as per clause 8.1 of Agreement, the respondent undertook

to complete the construction within a period of 42 months with further grace period of 6 months subject to force majeure from the date of execution of this Agreement.

- V. That as per clause 5.8 of Agreement, the respondent undertook to pay delayed payment interest @ 18% per annum, with provision of cancellation of allotment under clause 8.8, if default persists beyond 90 days. But clause 8.3 makes the respondent liable to pay delay compensation @ Rs. 7/- only per sq. ft. of the super area for every month of delay after expiry of grace period, at the time of offer of possession only which is a grossly unfair term.
- VI. That by 29.05.2019, the complainant had paid Rs.34,69,724/- towards the basic sale price and Rs.2,58,055/- towards taxes. Thus, a total of Rs.37,27,778/- have been paid by the complainant against various demands raised by the respondent.
- VII. That the respondent sent a "Final Call Letter" cum "Offer of Possession" on 19.03.2021, demanding a sum of Rs.16,12,665/- including Car Parking Charge, Electrification charge and HVAT, after adjusting Input Tax Credit of Rs.89,144/-, Delay Compensation of Rs.71,060/- and area reduction amount of Rs.14,220/-.
- VIII. That the respondent is in violation of his obligations under section- 12 of the Act, charged Rs.4,00,000/- towards Car Parking Charges by misrepresenting it as non-common area. It is settled law that basement, stilt or open car parking areas are common areas hence no user charge can be levied nor can Car Parking be sold to allottees for a monetary consideration or otherwise. Thus, the respondent is liable to cancel the car parking charges amounting to Rs.4,00,000/- being paid by the respondent.
- IX. That the respondent is liable to cancel demand for advance maintenance charge for 12 months as there is no provision for it in the Agreement. That as per sub-clause 12.2 of agreement, the respondent was bound to charge

1.2 times the cost of maintenance hence he is liable to disclose the break-up of maintenance costs. The respondent is liable to disclose the type of connection (11kV or 33kV) and provide the detailed calculations of Electricity Infrastructure and Connection charges of Rs.1,29,950/-, indicating total amount payable to power supplier, total super area of project and cost per sq.ft.

- X. That in terms of Clause 3.1 of the agreement, the covered area of the unit is only 327 sq.ft. while the super area was stated as 595 sq.ft. without giving any justification for the same. The price of the unit is based of super area to the malafide of the respondent to cause unlawful gains to itself and unlawful loss to the complainants of an amount of Rs. 19,31,744/- alongwith interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to credit delayed possession compensation at the prescribed rate of interest from the due date of possession till the date of physical delivery of the possession.
- ii. Direct the respondent to disclose the basis and calculations of
 - (a) Input Tax Credit and Delay compensation offered,
 - (b) Liability towards payment of demand of HVAT, Electrification charge and maintenance charges.
- iii. Direct the respondent to cancel the car parking charges and car maintenance charge.
- iv. Direct the respondent to provide copies of EC, LOI, License, BRIII, Building Plans, Statement of EDC/IDC paid to DTCP and LC IV relevant to licenses.
- v. Direct the respondent to provide the undertaking that all the amenities have been provided as per the brochure and the laws.
- vi. Direct the respondent to pay Rs.45,000/- towards legal expenses incurred.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -
- I. That the respondent was developing a commercial project in the name and style of 'Conscient One' situated at Sector 109, Gurugram, Haryana. The complainant booked a service suite unit bearing number 1204 on the 12th floor, in the said complex having a super area of 595 sq. ft. for a total sale consideration of Rs.51,05,665/-.
 - II. In terms of the application dated 25.09.2014, the respondent issued the "Reservation Letter" dated 25.09.2014 reserving the said unit in favour of the complainant and consequently provided the relevant documents including the receipt for the booking amount, payment schedule and installation call letter to the complainant.
 - III. That vide email dated 25.03.2015, the respondent intimated the complainant that the respondent sent the Buyer's Agreement to the complainant for execution. The parties duly executed the Buyer's Agreement on 29.05.2015. Vide email dated 01.10.2020, the complainant sought an update on the construction site and the same was provided by the respondent to the complainant vide email dated 02.10.2020.
 - IV. That the respondent applied for the issuance of the Occupation Certificate qua the tower within which the said unit is located on 27.07.2020 and upon receipt of the Occupation Certificate for Tower A (from 3rd Floor to 12th Floor) and in terms of the said Agreement, thereafter, issued Final Call Letter dated 19.03.2021 calling upon the complainant to take possession of the said unit upon clearance of her outstanding dues amounting to Rs.16,12,665/-.

- V. That there had been a reduction in the Super Area of the unit from 595 sq. ft. to 565 sq. ft., the respondent also issued a Credit Note of Rs.14,220/- in favour of the complainant. It is pertinent to state that the respondent, as a gesture of goodwill, had awarded a compensation of Rs.71,060/- and an Income Tax Credit under Section 171 of the CGST Act, 2017 amounting to Rs.89,144/-.
- VI. That the complainant was also liable to pay additional sums of Rs.82,435/- towards advance maintenance charges, Rs.2,37,500/- towards stamp duty, Rs.25,500/- towards registration charges and Rs.15,000/- + 18% GST against administrative charges. Therefore, the complainant, in totality, was liable to pay a sum of Rs.19,75,800/-.
- VII. That it is pertinent to mention that due to certain force majeure circumstances, the completion of the unit had taken more time than anticipated. Even though the delay in the completion of the construction of the said unit was due to force majeure circumstances, beyond the control of the respondent, the respondent, in terms of the said Agreement and a goodwill gesture, admittedly awarded a compensation of Rs.71,060/- to the complainant.
- VIII. That on 31.08.2021, the respondent issued a reminder to the complainant to complete the payments and possession documentation and to take the physical possession of the said unit. The complainant, upon receipt of the "Final Call Letter" dated 19.03.2021, issued emails dated 31.03.2021, 05.04.2021, 06.09.2021, 11.10.2021 and 14.12.2021 raising certain concerns with respect to the calculations for the said unit. The respondent duly replied to the same vide email dated 06.04.2021, 21.09.2021 and 30.11.2021 and provided a detailed understanding of the amount due by the complainant.

- IX. That the respondent on 10.01.2022, issued another reminder email to the complainant for the execution of the "Conveyance Deed" and timely payment of stamp duty and registration charges to the state government. However, the complainant disregarded the same and raised the same queries with request to the calculation of the amount due vide email dated 10.01.2022.
- X. The complainant vide email dated 30.01.2022, requested the respondent to share the Occupancy Certificate and vide email dated 02.02.2022, the respondent shared the Statement of Account (S.O.A.) with the complainant.
- XI. That as per clause 8.1 and 8.3 of the said Agreement, the respondent was required to complete the construction within a period of 42 months with a grace period of 6 months, from the date of execution of the agreement or start of the construction of the block, whichever is later, subject to force majeure circumstances and timely payments by the complainant. Despite having faced force majeure conditions, successfully completed the construction of the block, pursuant to which, the respondent applied for Occupation Certification on 27.07.2020. The Occupation Certification was received on 10.02.2021.
- XII. That the respondent endeavored to complete the construction within the time period as stipulated under the said Agreement. However, owing to force majeure circumstances, there had been a slight delay in the construction of the said complex, which reasons are detailed hereinbelow.
- A. Order dated 08.11.2016 passed by the Hon'ble National Green Tribunal.
 - B. Order dated 09.11.2017 passed by the Hon'ble National Green Tribunal.
 - C. Notice dated 21.09.2017 issued by the Superintendent (DMC) For the Additional Chief Secretary & Financial Commissioner to Govt. of Haryana, Revenue and Disaster Management Department.

D. Direction dated 27.10.2018 bearing No. EPCA-R/2018/L-91 issued by the Environment Pollution (Prevention & Control) Authority for the National Capital Region.

E. Direction dated 24.12.2018 bearing No. EPCA-R/2018/L-113 issued by the Environment Pollution (Prevention & Control) Authority for the National Capital Region.

F. Shortage of treated sewage water at construction sites owing to the ban of usage of Ground Water by the Hon'ble High Court of Punjab & Haryana.

G. Imposition of Lockdown by the Govt. of India from 25.03.2020 till 31.05.2020:

7. The counsel for the complainant has moved an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 and raised certain additional facts and averments. Reply to the said application has been filed by the respondent on 05.10.2023 and an additional reply on 20.05.2024 along with amended reply on 21.10.2024. Vide proceedings dated 04.12.2024, the counsel for the complainant had withdrawn the application under Order VI Rule 17 of the CPC, 1908 and the same was allowed. Thus, only the averments as raised by the complainant in the complaint are being considered and not any other fresh averments are taken into consideration.
8. Copies of all the relevant documents have been filed and placed on the 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

9. 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

10. 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

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

Section 11(4)(a)

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

12. 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.

F. Findings on the objections raised by the respondent.

F. I Objections regarding force majeure circumstances.

13. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, ban of labour, ban of usage of groundwater, stoppage of work due to the order of various authorities and covid . Since they were circumstances beyond the control of respondent, so taking into

consideration the above-mentioned facts, the respondent be allowed the period during which the construction activities came to stand still, and the said period be excluded. The Authority is of the view that all the pleas advanced in this regard are devoid of merit. The Buyer's Agreement was executed between the parties on 29.05.2015 and the due date of handing over of possession was 29.05.2019. The events such as construction ban and various orders by NGT were for a shorter duration of time and were not continuous whereas there is a delay of more than three years. Thus, the promoter-respondent cannot be given any leniency based on the aforesaid reasons. It is a well settled principle that a person cannot take benefit of his own wrongs.

14. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons such as Covid-19 outbreak. The Authority put reliance on the judgement of 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 (1) (Comm) no. 88/2020 and LAS 3696-3697/2020 dated 29.05.2020 which has observed that-

"69. The past 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. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the same unit by 29.05.2019. The respondent is claiming the 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 regarding relief sought by the complainant:

G.1 Direct the respondent to credit delayed possession charges at the prescribed rate of interest from the due date of possession till the date of actual physical delivery of the possession.

16. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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."*

(Emphasis supplied)

17. Clause 8.1 of the Buyer's Agreement (in short, the agreement) dated 29.05.2015 provides for handing over possession and the same is reproduced below:

8.1

"That the company shall, under normal circumstances, complete the construction of block in which the said service suite is to be located within a period of 42 (forty two) months with the grace period of 6 (six) months and subject to force majeure from the date of execution of this Agreement or start of construction of the Block wherein the said Serviced Suite is located (whichever is later) in accordance with the said Approved plans and specifications seen and accepted by the Allottee (with additional floors with Units if

permissible) with such additions, deletions, alterations, modifications in the layout plans, change in number, dimensions, height, size, area or change of entire scheme, which the Company may consider or may be required by any competent authority to be made in them or any of them. In case, these changes are required after execution of the Sale/Conveyance Deed, then in order to implement those, any Supplementary Deed/Agreement, if necessary will be executed and registered by the Company. In case the same are warranted prior to the execution of the Sale/Conveyance Deed, Company's intimation to the Allottee shall be enough"

[Emphasis supplied]

18. The Buyer's agreement was executed on 29.05.2015. As per clause 8.1 of the agreement, the respondent was to offer the possession of the unit to the allottees within 42 months from the date of execution of the agreement or commencement of construction of the block wherein the unit is situated, whichever is later, along with a grace period of 6 months. The date of commencement of construction of the tower wherein the subject unit is situated is not available and thus the due date is calculated forty two months from the date of execution of the agreement. Therefore, the due date comes out to be 29.05.2019.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. 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.

21. 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., 29.01.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. 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;"*

23. On consideration of the documents available on record and submissions made by both the parties 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. The Authority has observed that the Buyer's Agreement was executed on 29.05.2015 between the complainant and the respondent. The possession of the subject unit was to be offered within a period of 42 months from the date of commencement of construction of the tower within which the unit is situated or execution of the agreement,

whichever is later plus a grace period of 6 months. The Authority calculated due date of possession from the date of execution of the agreement i.e., 29.05.2015 along with a grace period of six months which comes out to be 29.05.2019. The occupation certificate in respect to the subject unit has been obtained by the respondent on 19.02.2021 from the competent authorities and the offer of possession was made to the complainant on 19.03.2021. The respondent has failed to handover possession of the subject unit on the due date.

24. Vide proceedings dated 04.12.2024, the counsel for the complainant submitted that the offer of possession dated 19.03.2021 was invalid as the Occupation certificate dated 19.02.2021 does not pertain to the tower in which the subject unit is situated and thus, the demands raised by the respondent post Occupation Certificate are also invalid and be quashed. In response to the same the counsel for the respondent submitted that there is only one building/tower in the project comprising of retail units, serviced apartments, office spaces and the complainant was allotted suite no. 1204 in block-C. The Occupation certificate is for the Floor-3rd to 12th and the subject unit is situated on 12th floor. The offer of possession was validly made in terms of the Occupation Certificate. Thus, the Authority is of the view that as per the admission of the respondent, the Occupation certificate is considered to have been obtained on 19.02.2021 and the same is in respect of the subject unit.
25. 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. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the Buyer's Agreement dated 29.05.2015 executed between the parties. Further,

the Authority observes that the respondent obtained the occupation certificate on 19.02.2021 and offered possession to the complainant on 20.03.2018 and the conveyance deed was executed on 19.03.2021.

26. In the reply, the respondent have made a submission that the respondent has issued a credit note of Rs.14,220/- (As annexed on page no. 78 of reply) in favour of the complainant on account of the reduction in the super area from 595 sq.ft. to 565 sq.ft. and has awarded compensation of Rs.71,060/- and ITC amounting to Rs.89,144 and the same is reflected in the Statement of account and if any interest is payable to the complainants it has to be calculated only on the amount deposited by the complainants towards the basic principal amount of the unit and not on any amount credited by the respondent.
27. The Authority is of the view that an allottee becomes entitled to delayed payment interest only on the amount actually paid by the allottee as the allottee has suffered pecuniary loss only on this amount. The Authority further relies on the Judgement dated 15.03.2022, passed by the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. **234 of 2021 titled as Emaar MGF Land Ltd. Versus Anubhav Gupta**, and the relevant portion is reproduced for ready reference:-

43. The delayed possession interest is not payable on compensation already credited in the account of the respondent-allottee. This plea of the appellant is correct and logical. Therefore, in view of the aforesaid discussions, it is held that the appellant is liable to pay the interest as delayed possession charges on the amount i.e., (Rs.1,15,02,318/- minus Rs.6,23,447/- = Rs.1,08,78,871/-) from 01.03.2016 till the handing over of the possession.

45. Thus, keeping in view our aforesaid discussion, the appeal filed by the appellant is partly allowed as per the above said observations and the impugned order of Authority is modified to the extent that the appellant shall pay the delayed possession interest @9.3% per annum on the amount of Rs.1,08,78,871/- from the due date of possession i.e., 01.03.2016 till handing over of the possession. The interest on the amount, if any, which has been paid after the due date of possession i.e., 01.03.2016 shall be payable from the date on which the amount has been paid till the handing over possession.

28. In light of the above, the Authority is of the view that the allottee is liable for delayed possession charges on the amount actually paid by the complainant and not the compensation/rebate given by the respondent company.
29. 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 delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 29.05.2019 till the date of offer of possession plus two months after obtaining the occupation certificate, after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II. Direct the respondent to disclose the basis and calculations of :

(a) Input Tax Credit and Delay Compensation offered,

(b) Liability towards payment of HVAT, Electrification charges and maintenance charges.

G.III Direct the respondent to cancel the car parking charges and car maintenance charges.

30. The respondent-promoter is directed to provide the detailed calculations in respect to the ITC and delay compensation offered to the complainant along with an updated Statement of Accounts within a period of 30 days of the order. The respondent has charged Rs.4,00,000/- on account of car parking charges and the same is already included in the sale consideration. The respondent is directed not to charge anything beyond this. Also, the respondent is directed not to charge anything from the complainants which is not part of the Buyer's Agreement.

G.IV Direct the respondent to provide the copies of EC, LOI, License, BRIII, Building Plans, Statement of EDC/IDC paid to DTCP and LCIV relevant to licenses.

31. That according to clause 19(1) of the Act, 2016 :

"The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter."

32. Thus, the respondent is hereby directed to provide the same to the complainant.

33. As regarding the EDC/IDC charges, the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on the pro-rata basis on account of EDC, IDC., depending upon the area of the unit vis-a-vis the area of all the units in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. The respondent is directed to provide specific details w.r.t these charges.

G.V Direct the respondent to provide the undertaking that all the amenities have been provided as per the brochure and laws.

34. No arguments in this regard has been advanced by either of the parties during the course of proceedings. Hence, in such a situation the aforesaid issued cannot be deliberated upon by the Authority.

G.VI Direct the respondent to pay Rs.45,000/- towards legal expenses incurred.

35. The complainant is seeking the above mentioned reliefs 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 complainant may approach the adjudicating officer for seeking the relief of compensation

H. Directions of the authority: -

36. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainant from the due date of possession i.e., 29.05.2019 till the date of offer of possession plus two months after obtaining the occupation certificate, after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued, if any , after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.
- iii. The respondent-promoter is directed to provide the detailed calculations in respect to the ITC and delay compensation offered to the complainant along with an updated Statement of Accounts within a period of 30 days of the order.
- iv. The respondent has charged Rs.4,00,000/- on account of car parking charges and the same is already included in the sale consideration. The respondent is directed not to charge anything beyond this.

- v. The respondent is hereby directed to provide the copies of EC, LOI, License, BR-III, Building Plans, Statement of EDC/IDC paid to DTCP and LC-IV relevant to licenses.
- vi. The respondent is directed not to charge anything that is not part of the agreement.
37. Complaint as well as applications, if any, stands disposed of.
38. File be consigned to the registry

Dated: 29.01.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM