



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no:</b>	<b>1524 of 2022</b>
<b>Date of filing:</b>	<b>14.07.2022</b>
<b>First date of hearing:</b>	<b>27.09.2022</b>
<b>Date of decision:</b>	<b>18.11.2024</b>

1. Mr. Mayank Mittal S/o M.M. Mittal,  
H.No. 1226, Sector 13, UE,  
Karnal-1321001

2. Mrs. Santosh Mittal W/o M.M. Mittal,  
H.No. 1226, Sector 13, Urban Estate,  
Karnal-132001

.....COMPLAINANTS

VERSUS

1. M/s K N Colonisers Pvt. Ltd.  
R/o 371,2<sup>nd</sup> Floor, Nirmal Vihar,  
New Delhi-110092

2. Mr. Shashi Chawla  
R/o C112, Preet Vihar,  
New Delhi-110092

3. Mr. Vipul Shah  
R/o H.No. 2103, Sector 4 (Part2),  
Karnal-132001

...RESPONDENTS



3.	Date of booking	28.07.2020
4.	Unit area	694.37 sq. ft. as per agreement to sell.
5.	Date of allotment	Allotment not made
6.	Date of builder buyer agreement	Agreement to sell executed on 29.08.2020
7.	Basic Sale Price	₹21,05,000/-
8.	Amount paid by complainant	₹ 22,75,000/- as per ledger attached at page no. 43 Annexure 3 of the complaint
9.	Possession Clause under BBA	Clause 21 of BBA which is as under:- <i>"...The promoter, agreed on the approved plans and specifications, assures to hand over the possession of Residential Unit in a period of 18 months/plus 6 months variables grace period from the date of execution of this Agreement to sale..."</i>
9.	Due date of possession	28.08.2022
10.	Offer of possession	15.02.2022

**B. FACTS AS STATED IN THE COMPLAINT**

3. That the complainants booked a floor on 28.07.2020 for a basic sale price of ₹21,05,000/- in Anand Vatika and till 25.02.2022, they have paid ₹22,75,000/-
4. Within 1.5 months of agreement to sale, complainants paid ₹12,00,000/- (60% of total floor value) on 15.10.2020. However, later complainants



realized that builder raised demand for 70% of the unit value even before the agreement to sale dated 29.08.2020. Complainants constantly visited the society and site office and met project coordinator but the respondents kept delaying in delivery of possession of the unit.

5. That the complainants made another payment of ₹5,00,000/- by the end of February 2021, because builder mentioned that the floor will be delivered by April 2021. The total amount paid within 6 months of agreement to sale was ₹17,00,000/- which was 81% of the total floor value but no work progressed.
6. That in mid of September 2021, builder raised another demand of 10% and shared demand letter with the complainants. The total floor value in the demand letter was ₹22,73,400/- which was much higher than the booked amount of ₹21,05,000/- (Annexure -2).
7. Complainants paid 50% of the demand but stopped balance 50%, as complainants were tired of false promises. Nothing progressed for another 3 months and in late December, 2021, respondents again suggested that they will deliver the possession as soon as complainants clear the payment.
8. On 10<sup>th</sup> January 2022, a demand letter dated 27.12.2021 mentioning delayed interest penalty of ₹2,21,000/- was shared by the respondents with the complainants which is placed at page no. 41 of the complaint.



Within a span of 3 months, how penalty of ₹2,21,000/- can accure on an amount of ₹1,24,000/-, even though complainants had already made the payment of ₹18,00,000/- which was 86% of the total flat value.

9. After many discussions with the respondents, an agreement was reached that complainants will clear the principal payment, if offer of possession will be released and in good faith, complainants paid ₹1,00,000/- on same day. Complainants requested to the respondents to relook at the penalty portion as dates were not correct. Mr. Vipul (respondent no. 3) came with an offer of waiving of ₹1,21,840/- from penalty amount, if complainants pay ₹1,00,000/- in cash. Complainants being very tired and annoyed, offered the respondents that they will pay ₹1,00,000/- if respondent show them calculations. Nothing was shared and finally on 11 May, 2022, through an email. Mr. Vipul agreed to minting money and asked the complainants to take legal route for better results.

**C. RELIEFS SOUGHT:-**

10. That the complainants seeks following reliefs and directions to the respondent:-

Amount Claimed	Justification
₹1,47,400/-	Extra Money charged upward of ₹21,05,000/- by adding "on plinth Beam level entry" in demand letter.
₹1,08,000/-	For the rent that complainant paid due to delay in delivery of floor from builder.



₹1,00,000/-	Same amount as builder was trying to mint from us in name of penalty interest to provide possession letter.
10,000/-	For HRERA filing + Consultancy Charges + Documentation charges + Logitics.
8.75% of 22,75,00/- per annum	From March 2022, when possession letter was to be handed over as full and final payment has been done.
₹3,65,400 + 49,765=₹4,14,765.	Total Amount.
Also requested the Authority to get us possession letter and No Due Certificate from the Builder and handover the possession of the flat with all facilities and furnishings that were part of the agreement.	

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS**

Learned counsel for the respondent filed a detailed reply on 31.10.2022 pleading therein as under :-

11. That the project of the respondent company namely, Anand Vatika is registered with the RERA Authority bearing registration no. 302 of 2017 dated 13.10.2017, valid till 12.10.2022.
12. That the respondent company had filed its applications dated 02.06.2021 and 19.04.2021 for grant of completion certificate which has been granted by the Department of Town and Country Planning, Haryana on 7.06.2022 (Annexure R-2).
13. Complainants were obligated to make timely payments, as per agreed terms, however, the same was not adhered to.



14. That the respondents company has already obtained Completion Certificate dated 07.06.2022 and has already made an Offer of Possession on 15.02.2022 to the Complainants. The Offer of Possession Letter dated 15.02.2022 is annexed by the Complainants as Annexure 4 to this Complaint. Grant of Completion Certificate within the validity of RERA registration (validity date 12.10.2022) clearly points out to the timely completion of the project by the respondent company and there is no delay in offering possession of the unit to the complainants.
15. That as per the agreed terms and conditions, specifically Clause 21 of the Agreement, possession of the residential Unit was to be handed over within a period of 18 Months (+6 Months grace period) from the date of execution of the Agreement for Sale dated 29.08.2020. In the instant case, the Agreement for Sale was executed on 29.08.2020. It must also be stated that since, March 2020 COVID-19 pandemic had engulfed the entire world and accordingly, even the RERA Authority had granted extension to Real-Estate projects for completion. In any case, 24 Months, i.e., 18+6 Months are yet to expire, i.e., on 28.08.2022. It is rather before that date itself, i.e., on 15.02.2022 that the respondent company offered possession of the unit to the Complainants.



16. It is stated that it is the complainants who are not coming forward to take the possession of the unit and are not clearing the balance dues. That as per the terms and conditions agreed upon by the parties in the Agreement for Sale dated 29.08.2020, the complainants are liable to pay maintenance and holding charges, in case of delay in taking possession. The company reserves its right to pursue appropriate legal action for recovery of the same from the complainants. That the delay being caused by the complainants in not taking the possession of the unit is unreasonable, deliberate and is only a means to arm-twist the respondent company into acceding to the unfair and exorbitant demands.
17. That the complainants were liable to make payments to the respondent company as per the Payment Schedule agreed upon at the time of entering into the Agreement for Sale dated 29.08.2020. It is stated that the complainants did not make timely payments to the respondent company and at various stages defaulted in making timely payments. That various demand letters were sent to the complainants dated 30.08.2020, 05.02.2021, 19.07.2021, 27.12.2021 and 20.09.2022. All the said demand letters are annexed and marked as Annexure R-4, Annexure R-5, Annexure R-6, Annexure R-7 and Annexure R-8 respectively.





18. It is clear from the demand letter / account statement dated 27.12.2021 that an amount of Rs.6,95,240/- is due from the Complainants on account of delayed interest payment as on 27.12.2021. The interest on delayed payment has been calculated in accordance with the terms and conditions of the Agreement for Sale dated 29.08.2020 and Calculation Sheet in this regard is attached as Annexure R-9.
19. That the complainants are liable to pay costs relating to legal expenses and charges, which are being incurred by the answering respondents on account of the frivolous complaint which has been filed.
20. That no documentary proof have been annexed by the complainants to prove the baseless allegations levelled against the Respondent Company. The allegations are bald, baseless and are based on only whims and fancies, without any proof of the same.

**E. DOCUMENTS FILED BY THE PARTIES.**

21. Rejoinder filed by complainant in registry on 06.02.2023 –vide said rejoinder complainant has denied the submissions made by respondent in its reply dated 31.10.2022.
22. Application filed by complainant in registry on 21.08.2023 –Vide this application complainant has impleaded Ms. Santosh Mittal as complainant in this complaint and also placed on record a report in form of an affidavit in compliance of orders dated 10.05.2023 and



09.08.2023 passed by the Authority. The respondent company has filed an affidavit in response of the report in which they have mentioned that the flat in question stands completed and also clarified the status of deficiencies pointed out by the complainants in its report.

23. The respondent has also filed application on 29.09.2023 for recalling of orders dated 20.09.2023 and waiver of cost.
24. An application for placing on record the receipts of fees of Local Commissioner has been filed by the complainant on 29.12.2023 and by the respondent on 05.01.2024.
25. The respondent company has filed an applications for raising objections to the Local Commissioner report dated 24.05.2024. Thereafter, an application for recalling of order dated 09.09.2024 has also been filed by the respondent.

**F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

26. During oral arguments, Id. counsel for complainants reiterated the facts of the complaint. Learned counsel for complainants stated that the complainants have already paid payments of ₹22,75,000/- against the total sale consideration but possession has not been offered by the respondent till date. Learned counsel for respondent company has



stated that he has already filed an application for objections to the LC's report but in order dated 09.09.2024, it was not mentioned and a last opportunity was given.

**G. ISSUES FOR ADJUDICATION**

27. Whether the complainants are entitled to the reliefs sought or not?

**H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY**

28. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both the parties, Authority observes as follows:

(i) Factual position of the case is that complainants booked a floor on 28.07.2020 for basic sale price of ₹21,05,000/- in Anand Vatika, Sector-36, Karnal, being developed by the respondent no. 1 against which an amount of ₹22,75,000/- has already paid by the complainants till 22 Feb 2022. Out of said paid amount, complainants are objecting an amount ₹1,47,400/- which was extra charged by the respondent company upward of ₹21,05,000/- by adding a plinth beam level entry in demand letter. Perusal of demand letters dated 10.08.2021 and 27.12.2021, annexed as Annexure 2 with the complaint, reveals that the charges of plinth beam level entry are included in basic sale price of ₹21,05,000/- and no extra charges are




added in it. Further the charges mentioned for plinth beam level in the said demand letters are ₹2,24,000/- inclusive of CGST+SGST and that charging of this amount is not challenged by the complainants in their relief clause. The complainants could not prove any entry of an amount of ₹1,47,000/- in the ledger account or through payment receipts. Furthermore, under clause 1.2 to 1.10 of the agreement to sale, complainants have specifically agreed to payments of all additional costs over and above the, "value of the said unit". Hence, the relief of extra charged amount on plinth beam level has no merits to be decided.

(ii) As per Clause 2 of relief clauses, complainants are claiming for rent which has been paid by them due to delay in delivery of floor. It is pertinent to mention here that the complainants have not mentioned the section/provision of RERA Act under which they are claiming rent amount. Also, no proofs of payment of rent have been attached with the complaint. Complaints before the Authority are filed under Section 31 read with Section 18 of the RERA Act. Section 18 of RERA Act only, talks about refund of paid amount and possession with delayed interest. Hence, no direction is required to be passed against the said relief. However, complainants are at liberty to approach the Appropriate Forum for the said relief.



(iii) That the complainants have claimed refund of an amount of ₹1,00,000/- as per Clause 3 of relief para which has been charged by the builder from complainants in the name of penalty interest to provide possession letter. However, no documentary evidence has been attached by the complainants regarding it which substantiates their claims. Hence, no direction is being passed on this issue.

(iv) That as per Clause 4 of relief para, the complainants claimed delayed interest from March 2022 when possession was to be handed over, as full and final payment had already been made by them. In this regard, it is pertinent to mention here that as per clause 21 of agreement to sale dated 29.08.2020, possession of residential unit was to be handed over within a period of 18 months + 6 months grace period, i.e., by 28.08.2022. The offer of possession was given by the respondent company to the complainants on 15.02.2022 whereas completion certificate was obtained by the respondent company on 07.06.2022. Thus the possession offered prior to receiving Completion Certificate is not legally valid offer. Hence, the complainants were not bound to accept the same. Though the completion Certificate was obtained by the respondent company within the time period agreed in the agreement to sale but respondents have not placed on record any document proving that after receiving



Completion Certificate, valid offer of possession was made to the complainants.

(v) That the complainants have also claimed to get the possession letter and no due certificate from the builder. It has also been requested that respondent be directed to hand over the possession of the floor with all facilities. As the offer of possession dated 15.02.2022, given by the respondent company was prior to the receiving of completion certificate dated 07.06.2022 which does not validate the complainants rights to take possession as the offer was not valid. It is pertinent to mention here that complainants are seeking delay interest w.e.f. March, 2022. However, the basis of determining said date is not detailed out by the complainants in their pleadings. Hence, the complainants are entitled to get delayed interest as well as monthly interest from deemed date of possession, i.e., 28.08.2022, till handing over the actual physical possession to the complainants.

(vi) Pursual of file, it founds that an application for recalling of order dated 20.09.2023 and waiver of cost imposed has been filed by the respondent. In this regard is pertinent to mention here that vide order dated 10.05.2023, both parties were directed to conduct joint inspection on 25.05.2023 which was complied by both the parties as already recorded in the order dated 09.08.2023. Further, vide order



dated 09.08.2023 complainant was directed to submit detailed report about shortcomings in the unit and respondent was directed to file response to the shortcomings pointed out by the complainant. Complainant had filed detailed report about shortcomings on 21.08.2023 but respondent had not complied with the directions of the Authority. Thus, vide order dated 20.09.2023 respondent was to be burderned with a cost of ₹1,00,000/- payable to the Authority. However, in order dated 20.09.2023, the date of order which was not complied was inadvertently mentioned as 10.05.2023 instead of 09.08.2023 but the cost imposed on the respondent was valid due to non-compliance of the order of Authority. Hence, respondent's application for recalling of order dated 20.09.2023 and for waiver of cost stands rejected.

(vii) No relief has been sought against respondent no. 2 and 3 in the complaint. Hence, no direction is required to be passed against them.

(viii) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".*

(ix) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, 2017, 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.

(x) 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., 04.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

(xi) The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(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;*





(xii) Authority has got calculations of the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% till and said amount works out as per detail given in the table below. However, it is made clear that respondent company shall be liable to pay monthly interest till the valid offer of possession is made to the complainant.

Complaint no. 1524/2022- Calculating of upfront delay interest on the paid amount and monthly interest:

Sr.no.	Principal Amount	Deemed date of possession, i.e., 28.08.2022 or date of payment whichever is later	Interest Accrued till 18.11.2024
1.	22,75,000/-	28.08.2022	5,63,165
Total=	₹22,75,000/-		₹5,63,165/-
2.	Monthly Interest payable w.e.f 18.12.2024=₹20,755/-		

(xiii) Further, the complainant is seeking cost of litigation and documentation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the



quantum of compensation & litigation expense shall be adjudged by the learned 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. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

**I. DIRECTIONS OF THE AUTHORITY**

29. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent no.1 is directed to pay upfront delay interest as calculated above in para 28 clause (XII) of this order to the respective complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire paid amount, monthly interest of ₹20,755/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate.


(ii) Complainants will remain liable to pay balance consideration amount to the respondent no.1 at the time when possession offered to the complainants.



(iii) The rate of interest chargeable from the allottees 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 promoter shall be liable to pay to the allottees.

(iv) Respondent No.1 is directed deposit cost of ₹1,00,000/- imposed vide order dated 20.09.2023 within 30 days of uploading of this order, failing which, suo-moto proceedings for recovery of said cost will be initiated by the Authority.

30. **Disposed of.** Files be consigned to the record room after uploading of the order on the website of the Authority.

  
.....  
**CHANDER SHEKHAR**  
**[MEMBER]**

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**