

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**Order pronounced on: **23.04.2025**

Name of the Promoter		M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd.	
Project Name		M3M Urbana Premium	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/1526/2024	Rajni Chhabra & Anr. V/s M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd.	Akhil Aggarwal (Complainants) Shriya Takkar and Smriti Srivastava (Respondent)
2.	CR/1597/2024	Gaurav Jain & Anr. V/s M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd.	Akhil Aggarwal (Complainants) Shriya Takkar and Smriti Srivastava (Respondent)

CORAM:

Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, '**M3M Urbana Premium**' being developed by the same respondents/promoter i.e., M/s Martial Buildcon Pvt. Ltd. and M3M India

Pvt. Ltd. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession and delayed possession charges etc.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: M3M Urbana Premium, Sector-67, Gurugram
<p>Possession clause: Clause 16.1</p> <p><i>The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within a period of Fifty Four (54) months from the date of commencement of construction which shall mean laying of first plain cement concrete/mud-mat slab of the block/building in which the unit is located or the date of execution of this agreement, whichever is later (Commitment Period).</i></p>
<p>Date of commencement of project- Not on record.</p> <p>Due date of handing over of possession- 18.08.2022</p> <p>(Calculated from the date of execution of agreement due to non-availability of any document w.r.t to commencement of construction + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020).</p>
<p>4. Occupation certificate- 24.02.2021</p> <p>5. DTCP License no. 89 of 2010 dated 28.10.2010- Martial Buildcon Pvt. Ltd. is the licensee for the project as mentioned in land schedule of the project.</p> <p>6. RERA registration – 348 of 2017 dated 09.11.2017 valid upto 28.08.2024.</p>

Sr. No.	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/1526/2024 Rajni Chhabra & Anr. V/s M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd. DOF- 26.04.2024	Reply received on 28.08.2024	MUP/R/Food Court/2L/005, 2 nd Floor (page 60 of complaint)	18.08.2017 (Page 55 of complaint)	18.08.2022 Offer of possession- 25.02.2021	TSC: Rs.1,12,36,123.50/- (Page 115 of the complaint) AP: Rs.1,34,46,998/- (as per payment receipts at page 126-139 of complaint)	DPC and Possession
2.	CR/1597/2024 Gaurav Jain & Anr. V/s M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd. DOF- 26.04.2024	Reply received on 28.08.2024	MUP/R/Food Court/2L/006, 2 nd Floor (Page 47 of complaint)	29.09.2018 (page 42 of complaint)	29.09.2023 (inadvertently mentioned as 18.08.2022 vide proceedings dated 19.02.2025) Offer of possession- 25.02.2021	TSC: Rs.1,42,47,103.50/- (Page 102 of the complaint) AP: Rs.1,52,10,490.52/- (as per Annexure C-3 at page 113 of complaint)	DPC and Possession

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviations Full form

DOF- Date of filing complaint
TSC- Total Sale Consideration
AP- Amount paid by the allottee(s)

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of possession and delayed possession charges.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the

promoters/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1526/2024 titled as Rajni Chhabra & Anr. V/s M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges.

A. Project and unit related details

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

CR/1526/2024 titled as Rajni Chhabra & Anr. V/s M/s Martial Buildcon Pvt. Ltd. and M3M India Pvt. Ltd

Sr.No.	Particulars	Details
1.	Name of the project	M3M Urbana Premium, Sector-67
2.	Project area	11.13 acres
3.	DTCP license no. and validity status	89 of 2010 dated 28.10.2010 Valid upto 27.10.2022
4.	RERA Registered/ not registered	348 of 2017 dated 09.11.2017 valid upto 28.08.2024
5.	Unit no.	MUP/R/Food Court/2L/005, 2 nd Floor (page 60 of complaint)
6.	Unit area	1123.5 sq. ft. (super area)
7.	Date of builder buyer agreement	18.08.2017 (page 55 of complaint)
8.	Possession clause	16.1 "The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within a period of Fifty Four (54)

		<i>months from the date of commencement of construction which shall mean laying of first plain cement concrete/mud-mat slab of the block/building in which the unit is located or the date of execution of this agreement, whichever is later (Commitment Period).</i> (page 89 of complaint)
9.	Due date of possession	18.08.2022 (Calculated from the date of execution of agreement due to non-availability of any document w.r.t to commencement of construction + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
10.	Total sale consideration	Rs.1,12,36,123.50/- (page 115 of the complaint)
11.	Amount paid by the complainant	Rs. 1,34,46,998/- (as per payment receipts at page 126-139 of complaint)
12.	Occupation certificate	24.02.2021 (Page 106 of the reply)
13.	Notice of offer of possession	25.02.2021 [page 140 of complaint]

B. Facts of the complaint

8. The complainants have made the following submissions: -

- I. That the complainant was allotted a commercial unit bearing no. MUP/R/Food Court/2L/005 on 2nd Floor of the Retail Block admeasuring 1123.50 sq. ft. super area in the project of the respondents named "M3M Urbana Premium" located at Sector-67, Gurugram vide allotment letter dated 07.09.2016 issued by the respondent no.2, for a total sale consideration of Rs.1,12,36,123.50/- under construction-link payment plan.

- II. That the respondent no.2 illegally and with malafide intension took Rs.75,84,174/- i.e. more than 70% of the total sale consideration from the complainant even before signing and executing the builder buyer agreement. The respondent no.2 issued fresh welcome letter and allotment later on 24.05.2017 and surprisingly the schedule of payments was changed unilaterally by respondent no.2 in the said letter. The respondent no.2 issued illegal reminder letters to collect excessive payments under the threat of charging excessive interest.
- III. That it was only on 18.08.2017, the BBA was finally signed and executed between the complainants and the respondent no.2. The BBA contains several one-sided, arbitrary and discriminatory clauses and when the complainants became aware of the totally one sided and biased BBA, the complainant having already paid huge sum of money was left with no option but to sign on the dotted lines.
- IV. That the complainants paid more than the total sale consideration even before the payments as per the payment plan which has been annexed as Annexure-A with the BBA. It is to be noted that as per above mentioned payment receipts, the complainants have already paid the majority amount and in excess as stipulated in BBA by 2017 even before execution of BBA and subsequently issuance of Illegal offer of possession letter.
- V. That as per clause 16.1 of the BBA, the time for complete construction was stipulated to be 54 months from the date of execution of BBA or date of start of construction, whichever is later. However, the respondent no.2 has monumentally failed to complete the give possession of the unit to the complainants as per the BBA even after the lapse of more than two years.
- VI. That the complainants were shocked to have received the offer of possession letter dated 25.02.2021 from the respondent no.2 vide which

under the garb of offering possession, the respondent no.2 has not just imposed an unjustified, extra-contractual and illegal demand of excess money under various heads but also offered the possession without even completing the unit as per the terms of the BBA.

- VII. That the respondent no.2 has failed to provide the complainants a copy of the occupancy certificate even till date and therefore, the said offer of possession in itself remains defective due to failure of completing the statutory compliance. Additionally, the complainants deny the offer of possession wholly and very clearly since the demands raised by the respondent no.2 in the offer of possession letter is illegal and extra-contractual and further, the possession was offered by the respondent no.2 pre-maturely. Further, the complainants cannot be liable to pay any loss/damage/compensation/charges for not paying such an illegal demand raised by the respondent no.2 and also for not accepting the illegal offer of possession. Further, the said demands by the respondent no.2 are conditional on the fact that complainants sign and execute an "Indemnity Deed-cum-Undertaking" which is prima-facie illegal and is an attempt by respondent no.2 to strip the complainants of their statutory rights which evidently proves malicious intentions and fraudulent practices of the respondent no.2.
- VIII. That there are various illegalities in the offer of possession such as non-disclosure of carpet area, demand of development charges without any break-up, demand of GST, Labour Cess, Service Tax, Swachh Bharat Cess & Krishi Kalyan Cess without any justification, pre-mature offer of possession.
- IX. That respondent no.2 has abundantly failed to offer the possession in terms of the BBA and the purpose of a food court shop remains defeated since even the paper possession was offered, the said unit cannot be

brought into use by the complainants in any manner for breach of multiple contractual obligations by the respondent no.2. The same is outrightly illegal for the following reasons:

- As per the definition clause of “food court” and “food court specific common area”, the same includes common sitting and dining area. However, the same has not been completed/ finished till date. Specifications in Annexure-D of BBA specifically provide for building envelope aluminum glazing for air-conditioning in order to make the food court area usable. However, the same has not been provided till date.
- That specifications in Annexure-D of BBA also provide for suitable furniture for the dining hall and the same is also non-existent till date.
- That unit just does not mean the four-wall enclosure, as per the BBA and various advertisements by the respondent no.2, a unit in food court is incomplete till the time amenities attached to the same are also provided by the respondent as without the same complainants cannot bring the said units in use for the purpose the said units were sold by the respondent.
- That a mere cursory look at clauses 4.8, 4.13 and 4.16 of the BBA would absolutely and without any doubt establish that the total consideration of the unit already included the specification and attached amenities. respondent no.2 cannot force the possession by merely obtaining occupation certificate on the complainants and respondent no.2 is equally bound by the specifications as promised by it under BBA.
- Furthermore, the said food court is also intrinsically linked to the multiplex, retail and office spaces above and without the same there



will be no foot-fall. That the entire decision-making process of buying a food court unit was linked to revenue associated with people coming to the multiplex, retail and office spaces. However, till date the said multiplex, retail and office spaces is not ready and the respondent no.2 failed to fulfill its assurances and the same results into incomplete offer of possession as under no circumstance food court can be de-linked from the food court. It is an established norm in the real estate sector that the food courts are run parallel to the multiplexes as otherwise the revenue model of the food court does not make any commercial sense. Failure on part of the respondent no.2 to finish and lease the multiplex clearly shows that the respondent no.2 could not have offered possession to the complainants with the same.

- Additionally, the respondent no.2 had marketed the project to be high end having architectural edge and aimed at premium international brands. That the respondent no.2 in its various advertisements and assurance to the complainants had represented that multiplexes shall be leased to the PVR Gold. However, complainants have learnt that the respondent has leased the multiplexes to wave cinemas which is positioned significantly lower than PVR Gold. The same shall have severe impact on the resale value of the unit as well as leasing bargaining power for the unit as no top food brand will lease the food court linked with a downgraded range of cinema.
- Furthermore, it is an admitted fact by the respondent no.2 in various emails exchanged between the parties that leasehold rights of the food court to a common food court operator for all the shops remained with the respondent no.2. Respondent no.2 was,

admittedly, obligated to lease the food court to a food court operator at the time of possession. However, much less leasing the same, the respondent no.2 has not even completed the food court till date.

- It is also submitted that the respondent no.2 has illegally obtained floor wise OC for the project and the same is against the very essence of statutory provisions. The project cannot be handed over to the allottees when the construction work is still ongoing on the higher floors. Since it is one single building, lack of fire and safety approvals on the higher floors has direct bearing on the unit of the complainants which form part of the same building and cannot be safely handed over or given possession of.

- X. That the respondent no.2 is threatening the complainants to impose the holding charges, maintenance charges and admin charges after the alleged illegal offer of possession. Since the entire offer of possession is outrightly illegal, it is most humbly requested from the Authority that no such charges be allowed to be imposed on the complainants till the valid offer of possession is given by the respondent no.2 to the complainant as per provisions of the RERA.
- XI. That after the afore-mentioned illegal offer of possession was received by the complainants, the complainants issued various emails to the respondent no.2 objecting to the same, however, the respondent no.2 is completely failed to address the queries raised by them and has not provided even a single justification for such an illegal offer of possession.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- i. Direct the respondent no.2 to handover possession of the unit in question along-with prescribed rate of interest.

- ii. Direct the respondent no.2 to withdraw illegal offer of possession dated 25.02.2021 and order the excessive and unjustified GST & other taxes, interest and excessive development charges demanded by respondent no.2 in offer of possession dated 25.02.2021 as illegal.
 - iii. Direct the respondent no.2 to lease the food court to food operator.
 - iv. Direct the respondent no.2 to not charge any maintenance charges including IFMS and holding charges till actual possession.
 - v. Direct the respondent to form a RWA of allottees and to transfer the common area and its maintenance to the RWA.
 - vi. Direct the respondent to pay damages of Rs.5,00,000/- due to downgrading of multiplex, Rs.50,000/- p.m alongwith interest towards rental loss and Rs.1,00,000/- towards legal expenses.
10. On the date of hearing, the authority explained to the respondents/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 respondents: सत्यमेव जयते

11. The respondents vide reply and written submissions dated 15.04.2025 have contested the complaint on the following grounds.
- i. That the complainants have sought relief against the maintenance agency i.e. M/s M Worth Facility Services Private Limited however, have failed to make the maintenance agency a party to the present lis. Thus, the complaint is clearly defective in nature and is liable to be dismissed on the ground of non-joinder of necessary party.
 - ii. That the complainants were allotted a food court unit bearing no. MUP/R/FOOD COURT/2L/005 in the project of the respondents named "M3M Urbana Premium" vide allotment letter dated 07.09.2016.
 - iii. That the complainant no.1 and 3 had earlier paid an amount of Rs.4,50,000/-towards booking of a unit in one of the projects of M3M India Pvt Ltd. under the name of V. K. Education Society. The Complainants had requested vide joint letter dated 31.01.2017 along with an indemnity bond to the respondent to transfer the amount of

Rs.4,50,000/- towards the unit in question. Thereafter, the complainant approached the respondent to waive of the delayed interest of an amount of Rs.1,36,182/- and requested the respondent to change their payment plan. The respondent being a customer-oriented company acceded to the request of the complainants and changed the payment plan of the complainants which they chose on their own free will and volition. Accordingly, the revised allotment letter dated 24.05.2017 was issued to the complainants by the respondent and the amount paid towards the earlier allotment of the same unit being Rs.40,36,455/- was also transferred towards the present booking without any deductions. Accordingly, receipt dated 16.05.2017 for an amount of Rs.40,36,455/- was issued by the respondent and the same is already annexed at page no. 132 of the complaint filed by the complainants. The cost of the unit was Rs.1,12,36,123.50/- plus other taxes and charges. Thereafter, belatedly the buyer's agreement was executed between the parties on 18.08.2017. It is submitted that as per clause 16.1 of the buyer's agreement, the possession as to be offered within 54 months from the date of commencement of construction which shall mean the date of laying the first mud slab of the block/building in which the unit is located or date of execution of the buyer's agreement whichever is later. Further, the respondent no.2 is entitled to an extension of 6 months as grace period. It is submitted that the buyer's agreement was executed between the parties on 18.08.2017. Thus, the due date of possession is to be reckoned from the date of execution of execution of buyer's agreement being the later date. Thus, the due date of possession comes out to be 18.08.2022 (54 months + 6 months from 18.08.2017).

- iv. That the respondent no.2 informed the complainants about the revision in layout plans and accordingly, sought objections to the proposed

revision of layout plan vide letter dated 25.09.2017. It is submitted that no objection was ever raised by the complainants to the revision of building plans. The building plans were revised after following due process of law.

- v. That the respondents as agreed completed the construction and development of the complex well within time and the respondent applied to the competent authority for the grant of occupation certificate after complying with all the requisite formalities. The occupation certificate was granted by the competent authorities on 24.02.2021 after due verification and inspection that the building has been constructed accordance with the approved layout plans. Thereafter the respondent no.2 vide letter dated 25.02.2021 offered possession of the food court unit to the complainants and requested them to remit the outstanding amount towards the remaining sale price, service tax, cess, stamp duty charges etc. Thus, the respondents had fulfilled their promise and constructed the said food court unit of the complainants way before the agreed the timeline i.e. 18.08.2022. Thus, there was no delay in offering possession of the unit to the complainants. It is submitted that post receipt of occupation certificate due to increase in area, the price of the unit was increased, however, the respondent has provided the benefit of the GST to the complainant for an amount of Rs.2,96,436/-, due to which the cost of unit comes out to be Rs.1,09,08,589/- plus taxes and other charges as stated in the offer of possession. The increase in area of the unit is in accordance with clause 13.3 of the buyer's agreement and the same is within the 10% parameter. Since the complainants defaulted in making the payment of the outstanding dues raised vide the offer of possession, the respondent vide reminder letter dated 30.03.2021

requested the complainants to remit the outstanding dues within a period of next 15 days from the date of the issuance of this reminder.

- vi. That the complainants despite the leverage and time give, failed to come forward to take the possession of the unit. The respondent on various occasions vide emails dated 04.06.2022, 15.07.2022, 23.08.2022, 09.03.2023, 10.04.2023, 28.04.2023, 08.06.2023, 06.07.2023, 02.08.2023, 08.08.2023, 05.09.2023, 28.09.2023, 04.10.2023, 06.11.2023, 22.11.2023, 24.11.2023, 07.12.2023, 05.02.2024, 20.02.2024 and 02.04.2024 requested the complainants to come forward and take the possession of the unit as per agreed terms, but to avail. The default of the complainants in not coming forward to take possession of the unit and complying with other obligations is duly covered under the buyer's agreement. It is submitted that the respondent is incurring various losses/damages which maintaining the said unit and the complainant is liable to pay holding charges and maintenance charges. It is submitted that the complainants till date have deposited an amount of Rs.1,19,45,539/- towards the unit in question and taxes. The complainants are still liable to pay amounts towards IFMS and maintenance charges to the maintenance agency.
- vii. That the complainants approached the respondent no. 2 and expressed their intent to lease out the unit in question as agreed between the parties at the time of booking. The said fact is absolutely clear from the emails dated 30.06.2021 and 08.08.2023 which is marked and annexed at page nos. 167 and 182 of the complaint. The complainants had themselves given their consent to lease of the unit in question. Thus, it is absolutely clear that the unit in question was to be leased out to the prospective lessee. Accordingly, the respondent no.2 started reached out to the marquee brands for leasing of the unit. Thus, it is evident that the said

unit in question was not for self-occupation but meant for the purpose of leasing to third parties and the complainants are only entitled to constructive possession of the unit.

- viii. That the complainants approached the respondent no.2 and expressed their intent to lease out the unit in question as agreed between the parties at the time of booking and opted to lease out the unit to a suitable lessee either individually or combined along with other units. It is submitted that the interior work which is being carried out in the unit is vendor specific and it is as per the vendor's specifications. It is important to point out here that the food court units are vendor specific and each lessee/operator depending upon the brand, has its own specifications as to the placement of kitchen equipment/hobs and chimneys/water inlet and outlets/gas pipeline/electrical fittings/refrigeration equipment placement etc. The construction of walls of the individual units and internal fit outs are thus carried out after the vendor/brand has been identified and as per its specifications. Thus, apart from the internal fit outs, the entire food court was ready well in time. After an operator is identified and specifications are received, the remaining internal works would be done as per requirement of the lessee. Thus, it is evident that the said unit in question was not for self-occupation but meant for the purpose of leasing to third parties. The complainants have themselves prayed for leasing of the unit in question to a lessee which itself is self-explanatory that the complainants were well aware ab initio that the unit is for leasing purpose.
- ix. That the complainants are not genuine consumers and end users since they had booked the said unit in question purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainants have invested in many projects of different companies

which prove that they are not consumers but only an investor. Thus, it is clear that the complainants have invested in the units in question for commercial gains, i.e. to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainants are not consumers/end users. That the complainants cannot be treated as a consumer and hence the captioned complaint is liable to be dismissed at threshold.

- x. That the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this Authority.
- xi. That the respondent company as a goodwill gesture has been providing assistance to the complainant to lease out his unit to a brand and is only playing the role of a facilitator. The leasing of the unit is dependent on the market conditions. The respondent has made efforts in the past and got leasing proposals from different brands however, the deals did not materialise as the allottees did not agree to the proposed leasing terms. The complainant is free to lease out the unit to the brand/operator of his choice and start operations from his food court unit. It is relevant to mention here that the respondent is under no obligation to lease out the unit.
- xii. That all demands have been raised as per the terms of the buyer's agreement and the same were deposited by the complainant without any protest or demur. Further, it is submitted that no such assurances or promises were made to the complainants by the respondents qua multiplex. It is submitted that there is an operational multiplex in the project which regularly runs screening of movies. Moreover, the RWA has been formed under the provisions of Haryana Apartment Ownership Act,

1983 and registered in accordance with the provisions of Regulation of Societies Act, 2012.

12. 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

13. The respondent has raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

14. 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

15. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and

regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. 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 Objection regarding the complainants being investor.

17. The respondents have taken a stand that the complainants are investor and not a consumer. Therefore, they are not entitled to the protection of the Act and are not entitled to file the complaint under section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement dated 18.08.2017, it is revealed that the complainants are buyers, and have paid substantial amount to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. Further, the concept of investor is not defined or referred in the Act. Moreover, the Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. In view of the above, the contention of promoter that the allottees being investor are not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants:

- G.I Direct the respondent no.2 to handover possession of the unit in question along-with prescribed rate of interest.
- G.II Direct the respondent no.2 to withdraw illegal offer of possession dated 25.02.2021 and order the excessive and unjustified GST & other taxes, interest and excessive development charges demanded by respondent no.2 in offer of possession dated 25.02.2021 as illegal.
- G.III Direct the respondent no.2 to lease the food court to food operator.
- G.IV Direct the respondent no.2 to not charge any maintenance charges including IFMS and holding charges till actual possession.
19. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

20. Clause 16.1 of the buyer's agreement dated 18.08.2017 (in short, agreement) provides for handing over of possession and is reproduced below:

16.1 Possession of the unit

"The company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the unit within a period of Fifty Four (54) months from the date of commencement of construction which shall mean laying of first plain cement concrete/mud-mat slab of the block/building in which the unit is located or the date of execution of this agreement, whichever is later (Commitment Period).

21. **Due date of handing over of possession:** The respondents/promoter proposed to hand over the possession of the said unit within a period of 54 months from the date of commencement of construction or the date of execution of the agreement, whichever is later. Due to non-availability of any document pertaining to the commencement of construction, the due date is being calculated from the date of execution of the agreement. Thus, the due date of handing over possession comes out to be 18.02.2022. Further, an extension of 6 months is granted to the respondents in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 18.08.2022.
22. The authority observes that as per the possession clause, the due date for handing over of possession was 18.08.2022. The occupation certificate was granted by the competent authorities on 24.02.2021 and thereafter, possession of the unit/food court was offered to the complainants vide letter dated 25.02.2021 with a request to remit the outstanding amount towards the remaining sale price, service tax, cess, stamp duty charges etc. Thus, there was no delay on part of the respondents in offering possession of the unit to the complainants. Accordingly, no case for delay possession charges is made out.

23. The complainants are seeking additional relief w.r.t handing over of possession and leasing the unit in question to a food operator as agreed between them. The complainants have submitted that the respondent no.2 has abundantly failed to offer the possession in terms of the BBA and the purpose of a food court shop remains defeated since even the paper possession was offered, the said unit cannot be brought into use by the complainants in any manner for breach of multiple contractual obligations by the respondent no.2. The respondents have submitted that the complainants defaulted in making the payment of the outstanding dues raised vide the offer of possession and despite the leverage and time give, failed to come forward to take the possession of the unit. Accordingly, the respondents on various occasions vide emails dated 04.06.2022, 15.07.2022, 23.08.2022, 09.03.2023, 10.04.2023, 28.04.2023, 08.06.2023, 06.07.2023, 02.08.2023, 08.08.2023, 05.09.2023, 28.09.2023, 04.10.2023, 06.11.2023, 22.11.2023, 24.11.2023, 07.12.2023, 05.02.2024, 20.02.2024 and 02.04.2024 requested the complainants to come forward and take the possession of the unit as per agreed terms, but to avail. The respondents have further submitted the complainants approached the respondent no.2 and expressed their intent to lease out the unit in question as agreed between the parties at the time of booking and opted to lease out the unit to a suitable lessee either individually or combined along with other units. It is submitted that the interior work which is being carried out in the unit is vendor specific and it is as per the vendor's specifications and each lessee/operator depending upon the brand, has its own specifications as to the placement of kitchen equipment/hobs and chimneys/water inlet and outlets/gas pipeline/electrical fittings/refrigeration equipment placement etc. The construction of walls of the individual units and internal fit outs are thus carried out after the vendor/brand has been identified and as per its

specifications. Thus, apart from the internal fit outs, the entire food court was ready well in time. After an operator is identified and specifications are received, the remaining internal works would be done as per requirement of the lessee. Thus, it is evident that the said unit in question was not for self-occupation but meant for the purpose of leasing to third parties. The complainants have themselves prayed for leasing of the unit in question to a lessee which itself is self-explanatory that the complainants were well aware ab initio that the unit is for leasing purpose.

24. As per terms and conditions of the unit buyer's agreement dated 18.08.2017 executed between the parties, the physical possession of the unit/food court was to be handed over to the complainants and is permitted to be used by the allottees for the purpose of carrying the business of food and beverages only. Further, vide offer of possession letter dated 25.02.2021 as well as email dated 23.08.2022, the respondents while referring to the timely payments and formalities for timely execution of conveyance deed have themselves admitted the fact that the physical and legal possession of the unit was to be handed over to the complainants. In view of the above, the respondents/promoter is directed to handover possession of the unit to the complainants in terms of the buyer's agreement dated 18.08.2017, on payment of outstanding dues, if any within a period of 60 days.
25. The complainants are further seeking relief for directing the respondent no.2 to withdraw illegal offer of possession dated 25.02.2021 and order the excessive and unjustified GST & other taxes, interest and excessive development charges demanded by respondent no.2 in offer of possession dated 25.02.2021 as illegal. The authority observes that vide clause 4.1, 4.3 and 4.5 of the buyer's agreement, it was specifically agreed between the parties that the allottee shall pay the total sale consideration along with all other applicable taxes and charges. Thus, the complainants are liable to pay

applicable taxes and charges that are payable to the concerned authorities. However, the complainant would be entitled to proof of such payments to the concerned departments, before making payments under the aforesaid heads. Further, Section 19(6) & 19(7) of the Act, 2016 provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee. Accordingly, in case of default, the respondents/promoter can charge interest on the delayed payments at the prescribed rate i.e., 11.10% only.

G.IV Direct the respondent no.2 to not charge any maintenance charges including IFMS and holding charges till actual possession.

26. The authority observes that the respondents/promoter are well within their right to demand maintenance charges including IFMS at the time of offer of possession. However, the respondents/promoter is not entitled to claim holding charges from the complainants/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.

G.V Direct the respondent to form a RWA of allottees and to transfer the common area and its maintenance to the RWA.

27. The complainants are seeking relief w.r.t formation of RWA of allottees and to transfer common area and its maintenance to the RWA. The authority observes that as per Section 11(4)(e) of the Act, 2016, it is an obligation on the promoter to enable formation of association of allottees under the laws applicable and as per Section 19(9) of the Act, the allottee is also duty bound to participate towards formations of association of allottees. Further, as per Section 17(2) of the Act, after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans,

including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. The respondents vide written submissions dated 15.04.2025 have submitted that the RWA has already been formed under the provisions of Haryana Apartment Ownership Act, 1983 and is also registered in accordance with the provisions of Regulation of Societies Act, 2012. Accordingly, the said relief can only be sought by the RWA and not by the allottee in individual capacity.

G.VI Direct the respondent to pay damages of Rs.5,00,000/- due to downgrading of multiplex, Rs.50,000/- p.m alongwith interest towards rental loss and Rs.1,00,000/- towards legal expenses.

28. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. 2021-2021(1) RCR (C), 357*, has held that an allottee is entitled to claim compensation under sections 12, 14/18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer seeking the relief of compensation.

H. Directions of the authority

29. 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 function entrusted to the authority under section 34(f):
- No case for delay possession charges is made out.
 - The respondents shall handover possession of the unit/food court to the complainants in terms of the buyer's agreement



dated 18.08.2017, on payment of outstanding dues, if any within a period of 60 days.

- iii. The complainants are liable to pay applicable taxes and charges that are payable to the concerned authorities. However, the complainant would be entitled to proof of such payments to the concerned departments, before making payments under the aforesaid heads. Further, in case of default, the respondents/promoter can charge interest on the delayed payments at the prescribed rate i.e., 11.10% only.
 - iv. The respondents shall not charge anything from the complainants which is not the part of the buyer's agreement. However, the respondents are not entitled to claim holding charges from the complainants/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.
30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 31. The complaints stand disposed of.
 32. Files be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2025