

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

Date of decision: 27.02.2025

NAME OF THE BUILDER		M/S Apex Buildwell Pvt. Ltd.	
PROJECT NAME		"Our Homes"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1443/2023	Amit Kumar V/S M/s Apex Buildwell Pvt. Ltd.	Shri Karan Govel (Advocate for complainant) Shri Harshit Batra (Advocate for respondent)
3.	CR/1979/2023	Manoj Kumar and Hema V/S M/s Apex Buildwell Pvt. Ltd.	Shri Sunil Kumar (Advocate for complainant) Shri Harshit Batra (Advocate for respondent)

CORAM:

Shri Vijay Kumar Goyal

Member

ORDER

1. This order shall dispose of both the complaint titled as above filed before the authority 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 allottee as per the agreement for sale executed inter se between parties.

12

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, **"Our Homes" Sector 37-C** being developed by the same respondent/promoter i.e., **M/s Apex Buildwell Pvt. Ltd.** The terms and conditions of the Buyer's Agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and certain other issues.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Apex Buildwell Pvt. Ltd. "Our Homes", Sectors 37-C, Gurugram.				
Occupation Certificate: - 29.11.2019					
Possession Clause: - Possession clause: Clause 3(a) <i>That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment <u>within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans</u> and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.</i>					
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Due date of possession	Sale Consideration/ Total Amount paid by the complainants in Rs.	Offer of possession/Conveyance deed

A

1.	CR/1443/2023 Amit Kumar V/S M/s Apex Buildwell Pvt. Ltd. D.O.F. 12.04.2023 Reply: 06.10.2023	699B, Floor-6 th , Tower-Iris Area: 48 sq. mts. (carpet area)	02.06.2017 (Calculated from the date of the consent to establish including i.e. 02.12.2013 grace period of six months)	TSC: - Rs.16,00,000/- (page 16 of complaint) AP: - Rs.16,00,000/- (as per conveyance deed)	O.P: 11.03.2020 (page 56 of complaint) C.D. 08.07.2020 (page 57 of complaint) <i>*Note: inadvertently during proceeding dated 27.02.2025 date of conveyance deed was recorded as 20.11.2020</i>
2.	CR/1979/2023 Manoj Kumar and Hema V/S M/s Apex Buildwell Pvt. Ltd D.O.F. 12.05.2023 Reply: 27.12.2023	603, Floor-6 th , Tower-Jasmine Area 64 sq. mts. (carpet area) (page 49 of complaint)	02.06.2017 (Calculated from the date of the consent to establish including i.e. 02.12.2013 grace period of six months)	TSC: - Rs.16,00,000/- (page 49 of complaint) AP: - Rs.16,00,000/- (as per conveyance deed)	O.P: 01.12.2019 (page 19 of complaint) C.D. 12.02.2020 (page 21 of complaint)

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

Abbreviations Full form.

DOF- Date of Filing

TSC- Total Sale consideration

AP- Amount paid

O.P.: Offer of Possession

C.D.- Conveyance deed

The complainants in the above complaints have sought the following reliefs:

1. Direct the Respondent to interest @ 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to calculated as and when the thirty-six months was completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente - lite.
2. To pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the complainant.

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure

compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of all the above-mentioned complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1443/2023 titled as Amit Kumar V/S M/s Apex Buildwell Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges after the execution of the conveyance deed.

A. Unit and project related details.

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

S. No.	Particulars	Details
1.	Name of the project	Our Homes
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Low Cost/Affordable Group Housing
4.	HRERA registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019
5.	HRERA registration valid up to	01.12.2019
6.	Date of apartment buyer agreement	13.03.2013 (As per page no. 13 of the complaint)
7.	Unit no.	699 on 6 th floor, Tower- Iris (As per page no. 16 of the complaint)
8.	Unit area admeasuring	48 sq. mtrs. (Carpet area) (As per page no. 16 of the complaint)
9.	Possession clause	3(a) Offer of possession That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed

		by the developer, the developer proposes to hand over the possession of the apartment within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities.
10.	Date of grant of Environmental Clearance	26.06.2013 (as per the information obtained by the planning branch)
11.	Building Plan	07.05.2013 (as per the information obtained by the planning branch)
12.	Date of commencement of construction	CTE-02.12.2013 (taken from CR/1246/2022 of same project decided on 04.07.2024)
13.	Due date of possession	02.06.2017 (Calculated from the date of the consent to establish including grace period of six months)
14.	Sale consideration	Rs.16,00,000/- (exclusive of taxes) (As per page no. 16 of the complaint)
15.	Amount paid by the complainant	Rs.16,00,000/- (As per receipts at page no. 47-56 of the complaint)
16.	Occupation certificate	29.11.2019 (As per page no. 30 of reply)
17.	Offer of possession	11.03.2020 (As per page no. 56 of the complaint)
18.	Conveyance deed	08.07.2020 (As per page no.57 of complaint) <i>*Note: inadvertently during proceeding dated 27.02.2025 date of conveyance deed was recorded as 20.11.2020</i>

B. Facts of the complaint:

7. The complainant has made the following submissions in the complaint:

- That the complainant after seeing advertisements of the respondent in the newspaper namely Times of India for launching the project namely "Our

Homes" Village Garaui-Khurd, Sector 37C, Gurugram, Haryana, came into contact with the executives of the respondent, who embarked upon the complainant with their sales team with various promises of timely completion of project and swift delivery of possession on time.

- II. That the complainant, trusting and believing completely in the words, assurances and towering claims made by the respondent, fell into their trap and agreed to book a unit in the said project.
- III. That the complainant paid a sum of Rs.4,12,360/- as demanded by the respondent on 08.10.2012 and booked a Unit no. 699B on the 6th floor, Tower Iris, in the name of the complainants.
- IV. Further a buyer's agreement was also signed between the parties on 12.03.2013. Thereafter, from time-to-time further payments were made to the respondent by the complainant as per the demand letters. As per clause 3(a) of the buyer's agreement, the respondent agreed to handover possession of unit within a period of 36 months with a grace period of 6 months from the date of commencement of construction of the complex.
- V. That till date the complainant has paid a sum of Rs.16,00,000/-. The complainant has time and again requested the respondent to provide the account statement of the said unit but the respondent did not pay any heed to the said request.
- VI. That since the date of booking, the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
- VII. That the complainant tried his level best to resolve the issue of the delayed possession but the respondent did not pay any heed to the said requests of the complainant. On the contrary the respondent kept on asking for illegal demand of payment to the complainant by adding delayed payment interest and other illegal charges like maintenance etc.

- VIII. That the respondents by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainant to deposit his hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in this process the respondents gained wrongfully, which is purely a criminal act. The respondent has also played a fraud upon HDFC facilitating the loan amount in favour of the buyer and taking untimely payments without reaching the milestone of construction.
- IX. That as per the BBA, the Builder was required to give the possession of the unit by 12.09.2016. However, after much delay and harassment, the builder only gave the letter for offer of possession on 11.03.2020.
- X. That since the respondent had not delivered the possession of the apartment, of which the complainant is suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent. Furthermore, the complainant has been constrained by the respondent to live in a rented accommodation and pay extra interest on his home loan due to this delay.
- XI. That the complainant, thereafter had tried his level best to reach the representatives of respondent to seek a satisfactory reply for delayed possession compensation as per the rules and provisions of the Act in respect of the subject unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying monthly rent and extra Interest on his home loan due to delay in getting possession of the said unit

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay interest @ 18% p.a. which he charged from consumer as per rolling interest @ 18% per annum for the delay which has to be calculated as and when the thirty-six months was completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente - lite.
- ii. To pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the complainant

D. Reply by respondent:

9. The respondent has made following submissions:

- I. That the complainant, namely, Amit Kumar approached the respondent and expressed their interest in booking of an apartment in the Low Cost/Affordable Group Housing Project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- II. That thereafter, the complainants, vide an application form dated 08.10.2012 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 699B, 6th floor, Tower - Iris admeasuring 516.67 sq. ft. (tentative area) along with one car parking space was allotted to the complainant. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favour.
- III. Thereafter, a buyer's agreement dated 12.03.2013 was executed between the complainant and the respondent. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.

- IV. That after signing of the buyer's agreement, the parties entered into a contractual relationship and being in a contractual relationship, reciprocal promises are bound to be maintained by the parties. The rights and obligations of complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect.
- V. That as per Clause 3 of the buyer's agreement dated 12.03.2013, the due date of possession of the unit in question was 36 months from date of commencement of construction (02.12.2013) upon the receipts of all project related approvals along with a grace period of 6 months.
- VI. That the due date/possession clause provided under clause 3 of the builder buyer agreement was subjective in nature and hence shall depend on the allottee/complainant complying all the terms and conditions of the agreement.
- VII. Thus, the due date of offer of possession was subjected to the terms of Clause 3 (force majeure) and the complainant having complied with all the terms and conditions of the builder buyer agreement. The due date of the unit was subjected to the complainant having complied with all the terms and conditions of the builder buyer agreement. However, the complainant failed to fulfilled his obligation and had defaulted in making the outstanding payments.
- VIII. As per the customer ledger dated 31.08.2023, an outstanding amount of Rs.61,277/- is pending on the part of the complainants till date on account of charges including but not limited to power backup demanded at the time of offer of possession for which a reminder letter dated 17.01.2020 had also been sent to the complainant.
- IX. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various

authorities/forums/courts, before passing of the subjective due date of offer of possession. A period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 pandemic.

- X. That one day of hindrance in the construction industry leads to a gigantic delay and has a deep effect on the overall construction process of a real estate project. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. However, despite all odds, the respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions and has ensured compliance under the agreement, laws, and, rules and regulations.
- XI. That the respondent, despite such delay, earnestly fulfilled its obligation under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The various circumstances beyond the control of the respondent are the factors responsible for the delayed development of the project. The respondent cannot be penalized and held responsible for the default of its customers or due to force majeure circumstances. Thus, the present complaint deserves to be dismissed at the very threshold.
- XII. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainant but also as per the concerned laws, rules, and regulations thereunder and the local authorities. Despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application before the concerned Authority and successfully attained the occupation certificate dated 29.11.2019.
- XIII. That once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any

control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. Therefore, it is the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for the implementation of the project.

- XIV. That after receiving of the occupation certificate, the possession of the said unit was lawfully offered to the complainant vide offer of possession dated 11.03.2020. Thereafter the physical possession was taken by the complainant without any demur. It is now, after over 3 years of the offer of possession that the complainant has approached the Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. Hence, the present Complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter. The present complaint having been filed after over years of receipt of occupancy certificate, the complaint is not maintainable and should be dismissed.
- XV. That after giving the lawful possession of the unit to the complainant, the conveyance deed dated 08.07.2020 was also executed between the complainant and the respondent. After execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end.
- XVI. That there remains no claim/ grievance of the complainant with respect to the agreement or any obligation of the parties thereunder. The complainant had executed the conveyance deed after extensive investigation and judgment of the unit in question and the same has also been laid down in the clause 6.1 of the conveyance deed.

XVII. That in light of the bona fide conduct of the respondent, the peaceful possession having been taken by the complainants, non-existence of cause of action and the frivolous complaint filed by the complainants, the complaint is bound be dismissed with costs in favour of the respondent

10. All other averments made in the complaint were denied in toto.

11. Copies of all the relevant documents have been filed and placed on record.

Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

12. 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

13. 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

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

Section 11(4)(a)

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

15. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of

obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances.

16. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such delay in the completion.
17. Further, the argument related to Covid-19 lacks merit since the pandemic began in March 2020, which is much after the due date of possession. Therefore, leniency cannot be extended to the promoter/respondent based on these grounds. It is a fundamental principle that one cannot benefit from their own wrongdoing. Consequently, the Authority concludes that no relief can be granted to the respondent in this regard.

F.II. Objection regarding the complainant cannot claim delay possession charges after execution of the conveyance deed.

18. It had been contended by the respondent that on execution of the conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the

other. Therefore, the complainants are stopped from claiming any interest in the facts and circumstances of the case.

19. It is important to look at the definition of the term "deed" itself in order to understand the extent of the relationship between the allottee and the promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., buyer and seller. It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a sale deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration usually monetary. Therefore, a "conveyance deed" or "sale deed" implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
20. From the above it is clear that on execution of a sale/conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottees on execution of the conveyance deed.
21. The allottee has invested its hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as **Wg.Cdr. Arifur**

Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

22. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
23. After consideration of all the facts and circumstances, the Authority holds that even after execution of the conveyance deed, the complainant/allottee cannot

be precluded from the right to seek delay possession charges from the respondent-promoter.

F.III. Objection regarding complaint being barred by limitation.

24. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
25. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Sua Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
26. In CR/1443/2023 the cause of action arose on 11.03.2020 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 12.04.2023 which is 3 years 1 month from the date of cause of action. In the present matter the three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 24.02.2025.
27. Also, in CR/1979/2023 the cause of action arose on 01.12.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 12.05.2023 which is 3 years 5 month 11 days from the date of cause of action. In the present matter the

three-year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 14.11.2024.

28. In view of the above, the Authority is of the view that the both the complaint has been filed within a reasonable period of time and is not barred by the limitation.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay delayed possession charges alongwith interest.

29. The complainant booked a unit in the project "Our Home" located in Sector-37C, Gurugram, being developed by the respondent. They were allotted unit number 699 on the 6th floor of Tower-Iris. The buyer's agreement was executed between the parties on 13.03.2013. The respondent obtained the occupation certificate on 29.11.2019, and the offer of possession was made on 11.03.2020. Further, the conveyance deed was executed on 08.07.2020.
30. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges along with interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"Section 18: - Return of amount and compensation

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

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

31. The complainant-allottee has paid full amount of Rs. 16,00,000/- against the sale consideration of Rs. 16,00,000/- for the unit in question to the respondent.

32. The promoter has proposed to hand over the possession of the apartment within a period of 36 months (excluding a grace period of 6 months) from the date of issuance of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans. The period of 36 months with a grace period of 6 months expired on 02.06.2017 (calculated from date of consent to establish i.e. 02.12.2013). Since in the present matter, the builder buyer agreement incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows the grace period of 6 months to the promoter.
33. **Admissibility of delay possession charges at prescribed rate of interest:**
Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- "Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19; the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."
34. 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.
35. 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., 27.02.2025

is 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

36. 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;"*

37. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3 of the buyer's agreement executed between the parties on 13.03.2013, and the due date of as per buyer's agreement as 02.06.2017. Occupation certificate was granted by the concerned authority on 29.11.2019 and thereafter, the possession of the subject unit was offered to the complainant on 11.03.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 13.03.2013 to hand over the physical possession within the stipulated period.

38. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 29.11.2019. The respondent offered the possession of the unit in question to the complainant only on 11.03.2020. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 02.06.2017 till the date of offer of possession (11.03.2020) plus two months i.e., 11.05.2020.
39. 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 are entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 02.06.2017 till the date of offer of possession (11.03.2020) plus two months i.e., 11.05.2020 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
40. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:



S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant is entitled to DPC
1.	CR/1443/2023	02.06.2017	11.03.2020	W.e.f. 02.06.2017 till 11.05.2020 (i.e. 11.03.2020 plus two months)
2.	CR/1979/2023	02.06.2017	01.12.2019	W.e.f. 02.06.2017 till 01.02.2020 (i.e. 01.12.2019 plus two months)

G.II To pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the Complainant

41. The complainant is seeking relief w.r.t litigation in the aforesaid relief, 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. Supra* 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.

H. Directions of the authority

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

1. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 02.06.2017 till offer of possession plus two months as per proviso to section 18(1) of the Act read with rule 15 of the rules.



The due date of possession and the date of entitlement are detailed in table given in para 39 of this order.

43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
45. File be consigned to registry.

Dated: 27.02.2025



Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM