

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

Complaint no. : 2253 of 2023
Complaint received on: 19.05.2023

Alkesh

R/o: C-113, Spaze Privy, The Address, Axis Bank, Sector-93,
Gurugram, Haryana-122001

Complainant

Versus

M/s Apex Buildwell Private Limited

Regd. office: 14A/36, W.E.A., KarolBagh, New Delhi-110005

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sunil Kumar (Advocate)

Shri Harshit Batra (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

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2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the 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	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.	Allotment latter dated	12.03.2013 (As per page no. 13 of the complaint)
7.	Date of apartment buyer agreement	12.03.2013 (As per page no. 21 of the complaint)
8.	Unit no.	729 on 7 th floor, Tower- Rose (As per page no. 18 of the complaint)
9.	Unit area admeasuring	48 sq. mtrs. (Carpet area) (As per page no. 17 of the complaint)
10.	Possession clause	3(a) Offer of possession <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</i>

		<p>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. 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.</p>
11.	Date of environmental clearance	26.06.2013
12.	Date of commencement of construction of the project	02.12.2013 (Taken from CR/1546 of 2023 decided by HARERA dated 27.02.2024)
13.	Due date of possession	02.06.2017



		(Calculated from the date of commencement of construction of the project i.e., 02.12.2013 as per possession clause of BBA+ 6 months grace period) <i>(Grace period of 6 months is allowed unconditionally)</i>
14.	Sale consideration	Rs.16,00,000/- (exclusive of taxes) (As per page no. 23 of the complaint)
15.	Amount paid by the complainant	Rs. 16,00,000/- (As stated by the complainant at page no. 09 of the complaint) Rs.14,40,000/- (As on SOA at page no. 49 of the complaint)
16.	Occupation certificate	29.11.2019 (Taken from CR/1546 of 2023 decided by HARERA dated 27.02.2024)
17.	Possession Certificate	01.07.2020 (As per page no. 17 of the complaint)

B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:

- The the complainant after seeing advertisements of the respondent/builder herein, in the newspaper namely Times of India for launching the project namely "Our Homes" situated at 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. 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. The complainant booked a Flat No. 729, 7th Floor, Tower- Rose, Our Homes, Sector 37 - C, Gurugram, Haryana, in the name of the complainants.
- iv. 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 by within a period of 36 months with a grace period of 6 months from the date of commencement of construction of the complex.
- v. Till date the complainant has paid a sum of Rs. 16,00,000/-. That 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. 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. 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. The respondent 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

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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.

- ix. As per the BBA, the builder was required to give the possession of the unit within a period of 36 months with a grace period of 6 month from the date of commencement of construction of complex, i.e. by 02.06.2017. However, after much delay and harassment, the builder only gave the offer of possession on 01.07.2020.
- x. 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 and thus, the complainant is entitled to a compensation. 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. 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 Real Estate Regulatory Act in respect of the said dwelling 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.
- xii. The complainant had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure he was going through, but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

C. Relief sought by the complainants:



4. The complainants have sought the following relief(s):
- Direct the respondent to pay interest for every month of delay at prevailing rate of interest.
 - Direct the respondent to register the said flat in concerned registry and stamp duty which is paid by the complainant bear by the respondent.
 - Direct the respondent to pay cost of litigation of Rs. 30,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The present complaint has been filed on 19.05.2023 and the reply on behalf of the respondent has not been received till date. The authority issued a notice dated 24.05.2023 to the respondent by speed post and also on the given email address at kamereroon@gmail.com, sunilk1041@gmail.com. The counsel for the respondent neither put in appearance nor filed a reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defense of the respondent and proceed ex-parte against the respondent and decide the complaint on the basis of documents and pleadings filed by the complainant.
7. 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 those undisputed documents and submissions made by the parties

E. Jurisdiction of the Authority:

8. 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

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9. 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 the entire Gurugram District for all purposes 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

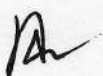
11. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on relief sought by the complainants:

F.I Direct the respondent to pay interest for every month of delay at prevailing rate of interest

F.II Direct the respondent to register the said flat in concerned registry and stamp duty which is paid by the complainant bear by the respondent

12. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. The complainant had booked a residential unit in the project titled "*Our Home*", being developed by the respondent in Sector-37C, Gurugram, Flat No. 729 on the 7th Floor of Tower-Rose was allotted to the complainant, and a buyer agreement was executed between the parties on 13.03.2013. As per the terms and conditions of the BBA, the respondent was under an obligation to complete the construction and offer possession of the said unit to the complainant within the period stipulated in the agreement. The complainant has raised a grievance that the possession, which was due to be offered in 2017, was in fact delayed by the developer.
14. As per the record, the occupation certificate for the said tower was obtained by the respondent on 29.11.2019 from the competent authority. The formal offer of possession was made on 01.07.2020. However, documents further indicate that the actual possession was offered to the complainant on 17.09.2020. The complainant has alleged that despite the timeline promised in the agreement, there has been an inordinate delay in handing over the physical possession of the unit, thereby causing mental agony, financial loss, and hardship.
15. In response to the complaint, the respondent/developer filed an application dated 12.10.2023, submitting a Settlement Deed/Memorandum of Understanding (MOU) dated 11.06.2020 executed between both parties. In this application, the respondent has taken the plea that the parties had arrived at a full and final amicable settlement concerning all disputes, issues, grievances, and concerns relating to the delay in delivery of possession and all consequential monetary claims.



16. According to the respondent, the said MOU was voluntarily entered into by the complainant, and through the same, the complainant had agreed not to raise any claims—whether of interest, compensation, refund, or otherwise—on account of the delay. Thus, the respondent submitted that the complaint filed subsequently is devoid of merit and is barred by the terms of the said MOU.

17. Subsequently, the respondent filed another application dated 26.07.2024 praying for dismissal of the complaint on the grounds that the complainant had already executed a full and binding settlement with the respondent on 11.06.2020. The respondent has contended that the filing of the present complaint is an abuse of the process of law, and is in complete contradiction of the understanding recorded in the MOU.

18. It was specifically submitted that once the complainant has, through a written and signed agreement, given up all rights to claim compensation or damages, and accepted the developer's waiver of interest as a full settlement, then no further grievance survives before this Authority.

19. The Authority has perused the Memorandum of Understanding dated 11.06.2020, particularly paragraph 2, which is reproduced below for reference:

That the allottee accepts the goodwill gesture of the Developer in offering the compensation by way of waiver of interest due towards the allotted flat and against the same the Allottee relinquishes and foregoes all causes of actions as available to the allottee whether for compensation or interest or refund or whatsoever, due to the delay and non-delivery of the possession of the said project with the stipulated time period.

20. From the language of the clause, it is evident that the complainant willingly accepted the respondent's waiver of interest as a form of compensation. In consideration of this, the complainant has clearly and unequivocally

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relinquished all rights to initiate or continue with any proceedings against the respondent on any account related to the delay in possession. Such waiver is legally binding unless proven to be vitiated by coercion, fraud, or undue influence—none of which have been alleged or demonstrated by the complainant in the present proceedings.

21. Furthermore, it is pertinent to note that a similar view has been consistently adopted by this Authority in complaint no. CR/3992/2023 and CR/6970/2022, wherein the complaints were disposed of in light of the settlement arrived at between the parties. Accordingly, the present matter is also liable to be considered in terms of the said precedent.
22. In view of the above facts, this Authority is of the firm view that the complainant has settled all disputes arising from the delayed possession of the allotted unit by entering into a legally valid and enforceable settlement agreement. The complainant has not provided any cogent material to show that the MOU was signed under duress or that the settlement should be declared invalid.
23. Therefore, the filing of the present complaint appears to be contrary to the express terms of the agreement between the parties. Having once waived his rights, the complainant is estopped from seeking any further relief through this forum. Accordingly, the complaint is found to be not maintainable either in law or on merits.

G.II Direct the respondent to pay sum of Rs. 30,000/- to the complainant towards the cost of the litigation.

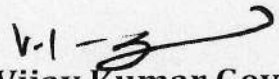
24. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Respondents Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357*), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19



which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense 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 & legal expenses.

25. In light of the settlement deed dated 11.06.2020, and the fact that the complainant has voluntarily and unequivocally relinquished all rights and remedies against the respondent, the Authority holds that no cause of action survives in the present matter. The complaint is barred by the principle of waiver and estoppel. Consequently, the complaint is dismissed as being not maintainable and stands disposed of accordingly.
26. Complaint stands disposed of.
27. File be consigned to the Registry.

Dated: 27.02.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram