

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

Complaint no.: 3749 of 2023
Date of filing of complaint: 21.08.2023
First date of hearing: 24.11.2023
Order reserved for: 27.03.2025

1. Abhinav Agarwal
2. Meghna Agarwal

Complainants

Both R/O: - B-1, 16/1, Sector-K, Aliganj Scheme,
Lucknow-226024.

Versus

Ishv Realtors Private Limited

Respondent

Office: 308, Time Centre, Golf Course Road, Sector-54,
Gurugram-110001

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Amit Chahal (Advocate)
Shri Shankar Wig (Advocate)

Complainants
Respondent

ORDER

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

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A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name of the project	"Skyline 109", Sector 109, Gurugram.
2.	Nature of project	Commercial Colony
3.	DTCP License no.	24 of 2011 from 24.03.2011 up to 23.03.2015
4.	Name of licensee	Jitender S/o Meer Singh and three others
5.	RERA Registered	Not Registered
6.	Shop no.	21 on 1 st floor (As per page no. 24 of the complaint)
7.	Area admeasuring	Super Area 556 sq. ft. (As per page no. 24 of the complaint)
8.	Date of builder buyer's agreement	22.08.2013 (As per page no. 22 of the complaint)
9.	Possession clause	15. <i>That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within Four years from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of</i>

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		<p><i>the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans / grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient.</i></p> <p><i>(Emphasis supplied)</i></p>
12.	Due date of possession	<p>22.08.2017</p> <p>(Note: Due date to be calculated 4 years from the date of this agreement i.e., 22.08.2013)</p>
13.	Total sale consideration	<p>Rs.37,37,432/-</p> <p>(As per page no. 24 of the complaint)</p>
14.	Paid up amount	<p>Rs.10,78,496/-</p> <p>(As stated by the complainant on page no. 7 and 14 of the complaint and as per clause 5 of BBA on page no. 28 of the complaint)</p>
15.	Occupation certificate	Not Obtained
16.	Offer of possession	Not Offered

B. Facts of the complaint:

3. The complainant has made the following submissions:
 - i. That the complainants received a call, sometime in the beginning of year 2013, from the marketing department of the respondent for

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- investing in the said project. It was stated by the respondent's representative that the respondent is an extremely successful builder/developer which has conceptualized, implemented and developed various projects in India.
- ii. That the aforesaid commercial complex would comprise of retail shops, hotels, serviced apartments, corporate offices etc. The respondent assured the complainants that the complex would include modern amenities like 24x7 power backup, CCTV security, recreational facilities etc. and would be instrumental in contributing to the life of the complainants. The respondent further invited the complainants to visit its office for a detailed presentation and overview of the project.
 - iii. That the complainants believing the representations of the respondent to be true in good faith, visited the office of the respondent and met a sales representative/agent of the respondent. The respondent, acting through its sales representative, assured the complainants that all the sanctions pertaining to the said project had been obtained by it. The complainants were further assured that the possession of the unit would be delivered by the year 2017 by the respondent. Thus, an impression was generated by the respondent that it is striving to deliver possession of the unit in a short period of time. The respondent further represented that the units in the project are selling out rapidly and it would be in the interest of the complainants to secure allotment of a unit by paying a certain sum of money to the respondent.
 - iv. That lured and induced by the representations and assurances made by the respondent, the complainants applied for allotment of a unit in the said project. In pursuance thereof, the complainants were

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allotted a unit bearing no. 21 admeasuring 556 sq. ft. super area situated on 1st floor in the said project. The total sale consideration for the unit in question had been initially quantified as Rs.37,37,432/-.

- v. That thereafter the respondent provided a pre-printed, arbitrary, biased and unilateral buyer's agreement to the complainants. The complainants after perusing the said agreement, raised certain objections against the clauses incorporated in the said agreement but the respondent did not budge. The respondent further threatened the complainants with forfeiture of the amount paid by them in case they fail to execute the buyer's agreement. It would not be out of place to mention that up till this point in time, the respondent had collected an amount of Rs.10,78,496/- i.e., 30% of the total sale consideration from the complainants. As a result, the complainants had no choice but to go ahead and execute the said agreement containing biased and prejudicial terms and conditions unilaterally incorporated by the respondent.
- vi. That the complainants specifically objected to the aforesaid clauses of the buyer's agreement and requested the respondent to incorporate parity between the parties. However, the concerned representative of the respondent stated that the buyer's agreement in question was a standard document and the same is executed invariably by all the allottees. The complainants did not want to lose their hard earned money in forfeiture and thus proceeded with the transaction and executed the flat buyer's agreement on 22.08.2013.
- vii. That without prejudice to the foregoing, it is submitted that as per clause 15 of the buyer's agreement, the respondent had undertaken to complete the construction of the project within four years from

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the date of execution of the buyer's agreement. Accordingly, the stipulated date for delivery of possession of the unit in question was 22.08.2017. However, the respondent consciously failed to offer possession of the unit in question to the complainants within the stipulated time period.

- viii. That the complainants have visited the office of the respondent and have requested the officials of the respondent multiple times to disclose the exact status of completion of construction of the said project but to no avail. The officials of the respondent have kept on evading the queries raised by the complainants on one pretext or the other. The complainants are completely unaware of the status of the unit in question and therefore reserve their right to amend the instant complaint in this regard.
- ix. That the respondent has miserably failed to complete the project within the stipulated time period. Thus, the respondent is liable to pay delay possession charges in accordance with the provisions of the Act of 2016. The complainants have requested the respondent multiple times to discharge its aforesaid financial and legal liability but to no avail. Moreover, the respondent has wantonly stopped communicating with the complainants in any manner.
- x. That the respondent has deliberately failed to fulfil its obligations nor has it complied with the terms and conditions as laid down in the said agreement. The respondent did not have the means, capacity and capability to fulfill its duties and obligations specified in the buyer's agreement. The complainants on the other hand have duly fulfilled their obligations and duties under the said agreement. It is pertinent to take into reckoning that the complainants have timely remitted all the installments on time to the respondent in

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accordance with its demands. It would not be out of place to mention that the respondent has miserably failed to intimate the status of construction of the said project and/or raise any demand for any installment after execution of the said agreement. Nevertheless, the complainants are still ready and willing to perform their part of the transaction. The complainants further undertake to pay all the installments on time as and when demanded by the respondent.

- xi. That the complainants do not wish to withdraw from the project as the complainants have always cherished a dream of owning the unit in question. The complainants in pursuance of their dreams have put their life long savings in the said project. The complainants after having waited patiently for so many years do not wish to give up the unit and abandon their long-cherished dream especially when no fault can be imputed to the complainants in the entire sequence of events.
- xii. That the complainants are entitled to delay possession charges and compensation in the facts and circumstances of the case. No lapse or default of any nature can be imputed to the complainants in the entire sequence of events. The complainants have fulfilled their contractual obligations arising out of said agreement and have always been ready and willing to abide by the covenants incorporated in the said agreement. The complainants further deserve to be compensated for the harassment and mental agony undergone by them on account of deceitful and unfair trade practices adopted by the respondent. No cogent or plausible explanation has been tendered by the respondent as to why the respondent has miserably failed to undertake and complete the construction within the stipulated time period under the said agreement.

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- xiii. That it is reiterated that the complainants have undergone acute monetary loss, inconvenience, mental agony and harassment on account of the illegal and unlawful acts of the respondent. Accordingly, the complainants reserve their right to seek compensation apart from the reliefs claimed hereunder from the appropriate forum.
- xiv. That the complainants have requested the respondent multiple times to remit the amounts due and payable to them by the respondent. However, the respondent has ignored and evaded the requests of the complainants on one pretext or the other. It is pertinent to mention that there have been deliberate misrepresentations on the part of the respondent. There is gross deficiency and culpable negligence on the part of the respondent. It is therefore respectfully submitted that the complainants must also be compensated for the litigation expenses incurred by them on account of the avoidable litigation the complainants have been compelled to institute.
- xv. That cause of action for filing the present complaint is a recurring one and it accrued in favour of the complainants each time the respondent failed to hand over the possession of the said unit, complete in all respects, to the complainants within the stipulated period. The cause of action further arose in favour of the complainants each time the respondent refused to pay the delay possession charges to the complainants. The cause of action further arose each time the respondent failed to complete the construction of the unit in question and/or the said project after passing of the stipulated date of delivery thereof. The cause of action lastly accrued to the complainants about a week ago on the final refusal of the

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respondent to accede to the legitimate and bona fide requests of the complainants.

- xvi. That no other complaint between the complainants and the respondent is pending adjudication before any authority/court/forum regarding the subject matter of the instant complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay delay possession charges calculated from August 2017 at the prescribed rate of interest till the date of delivery of possession of the unit in question to the complainants.
 - ii. Direct the respondent to complete the construction of the unit of the complainants and deliver its possession to the complainants forthwith.
 - iii. Direct the respondent to execute conveyance deed in respect of the unit in question in favour of the complainants within 1 month from the date of delivery of possession of the said unit to the complainants.
 - iv. Direct the respondent to expunge the prejudicial clauses from the flat buyer's agreement and/or to amend the flat buyer's agreement so as to bring it in conformity of the Act of 2016. In the alternative, this Hon'ble Authority may very kindly declare that the clauses indicated in the complaint are one-sided, prejudicial, arbitrary and not binding upon the complainant.
 - v. Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses incurred by the complainants.

- vi. Penalize the respondent for contravention of the provisions of the Act as well as for cheating and defrauding the intending allottees including the complainants.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:
- I. That it is submitted that the respondent company has and continues to conduct its operations in good faith and with the endeavour to successfully deliver its projects as per the decided terms.
 - II. That this disposition of the respondent company is substantiated by its conduct in the present dispute.
 - III. That as per the complaint itself, the respondent company made its last payment of the assured investment return on 02.12.2020, approximately 8 months since the Government of India invoked Disaster Management Act, 2005 on 24.03.2020 to impose of lockdowns, recognising the COVID-19 pandemic.
 - IV. That because of the occurrence and subsistence of a force majeure event, recognised by the Central Government as such, the system of assured investment return became unsustainable and was fatally affected due to the resulting economic slowdown, labour shortages, decrease in investments etc.
 - V. That nevertheless, the respondent company, acting out of its bona fide intent and earnest commitment, continued to adhere to terms of contract to the best of its abilities, for half of a year. This illustrates the ethics and the integrity of the respondent company.
 - VI. That despite its best efforts, the force majeure event rendered the respondent company simply unable to pay the assured investment return payments.

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- VII. That the pandemic has caused crippling delays in construction and shortages of necessary resources.
- VIII. That such was the state of affairs under which the respondent company was taken over by Sh. Amit Yadav and Sh. Mahesh Yadav, the new directors of the respondent company, from the erstwhile directors, near the beginning of 2023.
- IX. That the situation was so bleak, that the respondent company had entered into insolvency proceedings. But upon the induction of the aforementioned new directors, a new life has been infused to the company because of their diligent efforts.
- X. That the new directors are committed to uphold the values of the company and successfully delivering the present project.
- XI. That the respondent is happy to deliver the project to the complainants on the basis of a new agreement to sell that better suits the present needs of the project.
6. 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:

7. 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

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

Section 34-Functions of the Authority:

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

8. 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

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the courts, non-availability of construction material and labour, decrease in investment and lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. But all the pleas advanced in this regard are devoid of merit. Further, the authority has gone through the possession clause of the agreement and observed that

the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of execution of agreement. In the present case, the date of execution of agreement is 22.08.2013, so, the due date of subject unit comes out to be 22.08.2017. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

10. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 22.08.2017 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 22.08.2017, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

- G.I Direct the respondent to pay delay possession charges calculated from August 2017 at the prescribed rate of interest till the date of delivery of possession of the unit in question to the complainants.**

G.II Direct the respondent to complete the construction of the unit of the complainants and deliver its possession to the complainants forthwith.

11. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.
12. In the present complaint, 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)

13. The due date of possession of the apartment as per clause 15 of the builder's buyer's agreement dated 22.08.2013, is to be calculated as 4 years from the date of execution of buyer's agreement i.e., 22.08.2013. Therefore, the due date of possession comes to 22.08.2017.
14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prevailing rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.

15. 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.

16. 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., 27.03.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

17. 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;"

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

19. The counsel for the respondent vide proceedings of the day dated 13.02.2025 brought to the notice of the Authority that the respondent is not in a position to offer possession of the unit due to change in layout plan which has been revised as per statutory compliance and an intimation was sent to the complainants regarding the same and hence, the respondent can refund the amount paid by the complainants due to non-availability of the unit as per revised layout plan.
20. The counsel for the complainants during proceedings of the day dated 13.02.2025 has objected the statements made by the counsel for the respondent and stated that the complainants never received any intimation regarding the revised layout plan and they have never consented to the same and hence the complainants are seeking possession of the unit as well as delayed possession charges with interest.
21. The respondent in its written submissions filed on 25.02.2025 submitted that due to revised layout plan the 16 floors apartment has been reduced to 7 floors and as per buyer's agreement dated 22.08.2013, the complainants unit is on 1st floor. And as a result of statutory change which was necessary for the construction and completion of the project, the units initially allotted to several allottees including the unit of the complainant cannot be accommodated in the new plan.
22. Thereafter, the complainant has filed written submissions on 07.03.2025 and submitted that the new building plan uploaded by the respondent on the web portal of the Authority specifically states that "this is provisional building plan approved only for the purpose of inviting objections from the general public" and cannot be legally construed as an actual change in the building plans and the same cannot curtail the rights, title or interests of the complainant in any manner. It was further submitted by the complainant that as per the list of existing allottees of the project

provided by the respondent indicates that the unit in question is allotted to the complainant and is in existence.

23. After considering all the afore-mentioned submissions made by both the parties, the Authority is of the view that the project is in existence and developed by the same respondent only, thus the respondent is obligated to reinstate the allotment of the complainants. Furthermore, in case the unit of the complainant is not in existence, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of builder buyer's agreement between the parties. Further, the possession of the unit shall be handed over to the complainants after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. The rationale behind the same is that the allottee purchased the subject unit way back in 2013 and paid the demanded amount in hope to get possession of the allotted unit.
24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 22.08.2017. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority and no offer of possession has been made to the complainants-allottees. In view of the same, the respondent is directed to reinstate the allotment of the complainants. In case the unit of the

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complainants is not available, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of builder buyer's agreement between the parties.

25. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondents are established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.08.2017 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent to execute conveyance deed in respect of the unit in question in favour of the complainants within 1 month from the date of delivery of possession of the said unit to the complainants.

26. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
27. The occupation certificate is yet to be obtained by the respondent. Thus, the respondent is directed to handover the possession of the unit after

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obtaining occupation certificate and get the conveyance deed executed in terms of section 17 of the Act of 2016.

G.IV Direct the respondent to expunge the prejudicial clauses from the flat buyer's agreement and/or to amend the flat buyer's agreement so as to bring it in conformity of the Act of 2016. In the alternative, this Hon'ble Authority may very kindly declare that the clauses indicated in the complaint are one-sided, prejudicial, arbitrary and not binding upon the complainant.

G.V Penalize the respondent for contravention of the provisions of the Act as well as for cheating and defrauding the intending allottees including the complainants.

28. The Authority after carefully considering the submissions presented by the complainants, finds that the complainant has failed to substantiate her claims with any documentary evidence and it has not been pressed during the proceedings by the counsel for the complainants. In the absence of such material proof, the Authority is unable to ascertain the legitimacy of the complainant's concerns about the claimed reliefs. Thus, no direction to this effect.

G.VI Direct the respondent to pay an amount of Rs.1,00,000/- as litigation expenses incurred by the complainants.

29. The complainants are seeking relief w.r.t compensation 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:

30. Hence, the authority hereby passes this order and issues 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):

- i. The respondent is directed to reinstate the allotment of the complainants. In case the unit of the complainants is not available, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of builder buyer's agreement between the parties.
- ii. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 22.08.2017 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
- iii. The arrears of such interest accrued from due date of possession till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges. The respondent/promoter shall handover possession of the unit on obtaining of occupation certificate from the competent authority.
- v. The respondent is obligated to hand over the possession of the unit to the complainants after obtaining of occupation certificate/CC/part CC

from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

- vi. The respondent shall not charge anything from the complainants, which is not a part of the buyer's agreement.
- vii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

31. Complaint stands disposed of.

32. File be consigned to registry.

Dated: 27.03.2025

V.I. 
(Vijay Kumar Goyal)

Member
Haryana Real Estate Regulatory
Authority, Gurugram