

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

**Complaint no. :** 2525 of 2021  
**Date of filing complaint:** 21.06.2021  
**Order Reserve On:** 21.02.2025  
**Order Pronounced On:** 21.03.2025

Church's Auxiliary for Social Action  
Address: - Rachna Building, 2 Rajindra Place,  
Pusa Road, New Delhi-110008

**Complainant**

**Versus**

M/s Anand Divine Developers Pvt. Ltd.  
**Regd. Office at:** ATS Triumph, Sector-104, Gurugram

**Respondent**

**CORAM:**  
Shri Ashok Sangwan

**Member**

**APPEARANCE:**  
Sh. Dilip Singh  
Sh. Vinayak Gupta

**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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**



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

S. No.	Heads	Information
1.	Name and location of the project	"ATS Triump", Sector 104, Village-Dhanwapur, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	14.093 acres
4.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited
5.	HRERA registered/ not registered	Not registered
6.	Allotment letter dated	Not provided on record
7.	Date of execution of flat buyer's agreement	10.09.2019 (As per page no. 63 of the complaint)
8.	Unit no.	7151 on 15 <sup>th</sup> floor, tower 7 (Aa per page no. 64 of the complaint)
9.	Super Area	3150 sq. ft. (As per page no. 64 of the complaint)
10.	Possession clause	<b>As per clause 18 of the agreement: Time of handing over possession</b> <i>Barring unforeseen circumstances and force majeure events as stipulated hereunder, possession of the said apartment is proposed to</i>



		<i>be, offered by the company to the allottee on or before 28-Feb-2020, plus three months of grace period subject to timely payment of all amount as per the Agreed payment plan (Annexure-IV) including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard.</i>
11.	Due date of delivery of possession	28.11.2020 [Calculated as per clause 18 i.e. 28.02.2020 plus 3 months grace period mentioned in agreement plus 6 months of grace period due to covid-19]
12.	Total consideration	Rs. 2,10,00,000/- (As per payment plan on page no. 82 of complaint)
13.	Total amount paid by the complainant	Rs. 2,10,00,000/- (As alleged by the complainant on page no. 89 of complaint)
14.	Occupation Certificate	28.05.2019 (As per page no.44 of reply)
15.	Offer of possession	Not offered
16.	Handing over of possession	14.08.2024 (as alleged by complainant during proceeding dated 16.08.2024)
17.	Legal notice dated (seeking DPC)	22.12.2020 (As per page no. 102 of complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions: -





- I. That the complainant is a Non Government Charitable organization engaged in social work formed at the time of partition at call of first Prime Minister of India to minimize the sufferings of poor and displaced.
- II. That the complainant needed a residential flat for the personal use of its employee, preferably Director who is working in Delhi Office. The complainant booked the apartment/flat no. 7151 on 15<sup>th</sup> Floor, in the project of respondent and paid a sum of Rs. 25 Lakhs on 29.08.2019 and paid the entire consideration amount of Rs. 2,10,00,000/- within 45 days of booking so that the possession can be delivered. But till today, the furnishing work has not been started.
- III. That the complainant is a registered society for charity works and Mr. Prince Joshua Singh is the field officer in the society and he has been duly authorized to represent the complainant to file the case, sign, verify the complaint, affidavit, evidence, vakalatnama, to enter into compromise etc on behalf of the complainant.
- IV. That the complainant booked an apartment in the project of respondent on payment of Rs. 25,00,000/-. That on 10.09.2019 the respondent executed a buyer agreement for the flat allotted. As per clause 18 of the buyer agreement dated 10.09.2019, the time of handing over of the possession of the said flat/ apartment was on or before 28.02.2020. Till date the respondent has not offered the possession of the allotted unit.
- V. That the complainant paid the balance consideration amount of and so paid the entire consideration amount.
- VI. That on 13.03.2020 two officers of the complainant society visited construction site and found there was no progress. They were assured that the construction would be finished in another 2 months. Since March to July 2020, the complainant wrote several mail but no reply was sent from the office of respondent.





VII. That on 22.12.2020 complainant gave a legal notice to the respondent through advocate and demanded the possession of the said apartment with a sum of Rs. 18,17,102/- as compensation for delay in possession of the apartment and Rs.16,00,000/- as damage caused due to mental agony, harassment, time loss and reputation loss.

VIII. That the complainant received a mail on 04.02.2021 sent by Ms. Divya Negi on behalf of respondent. It is still illusive and misleading and no intention is shown to handover the possession of the unit.

IX. That in response to the mail of respondent, the complainant on 04.03.2021 sent another mail and asked for possession of the flat.

**C. Relief sought by the complainant:**

4. The complainant in the present complaint has filed an application dated 16.02.2024 for amendment of relief from refund to DPC, and now seeking the following relief(s).

- i. **Direct the respondent to hand over the physical possession of the unit.**
- ii. **To grant a sum of Rs. 29,33,960/- on account of furnishing of the flat as per annexure II of agreement dated 10.02.2019 entered into by parties.**
- iii. **Direct the respondent to pay a sum of Rs. 48,30,000/- as interest which is calculated @ MCLR +2% p.a. with future interest @ 9.5% p.a. till final payment.**
- iv. **Direct the respondent to pay a sum of Rs. 6,00,000/- as mental harassment and agony.**
- v. **Cost of Rs. 1,25,000/- to be paid to the complainant.**

5. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1**



6. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
  - I. That there is no cause of action to file the present complaint.
  - II. That the present complaint is bad for non-joinder of necessary parties. ICICI bank has not been accrued as a party in the present complaint.
  - III. That the complainant has no locus standi to file the present complaint.
  - IV. That the complainant is estopped from filing the present complaint by his acts, omissions, admissions, acquiescence's and laches.
  - V. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 39 of the buyer's agreement.
  - VI. That the complainant has not approached this Hon'ble Forum with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
    - VII. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects in and around NCR region such as ATS Greens-I, ATS Greens-II, ATS Village, ATS Paradiso, ATS Advantage Phase-I & Phase-II, ATS One Hamlet, ATS Pristine, ATS Prelude & ATS Dolce and in these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.





- VIII. That the complainant, after checking the veracity of the project namely, 'ATS Triumph', sector 104, Gurugram had applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the documents executed by the parties to the complaint. It is submitted that based on the application of the complainant, the buyer's agreement was executed on 10.09.2019 for unit bearing no. 7151, 15<sup>th</sup> floor, Tower no. 7 having super area of 3150 sq. ft.
- IX. That it was agreed that as per clause 4 of the buyer's agreement, the sale consideration of Rs. 2,10,00,000/- was exclusive of other costs, charges including but not limited to maintenance, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities.
- X. That the respondent was granted occupation certificate by the concerned authorities on 28.05.2019. The respondent has already completed the construction of the tower in which the unit allotted to the complainant is located.
- XI. However, on account of the ban on construction activities by the Hon'ble Supreme Court and several authorities, the implementation of the finishing work of some of the units of the project have been affected. Moreover, the outbreak of the deadly Covid-19 virus has resulted in significant delay in completion of the construction of the projects in India and the real estate industry in NCR region has suffered tremendously. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labour at the construction sites as several labourers have migrated to their respective hometowns. The Covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same is thus beyond the reasonable apprehension of the respondent. It is submitted that the same falls under the ambit of the





definition of 'force majeure' as defined in clause 23 of the buyer's agreement and the respondent cannot be held accountable for the same.

- XII. That The time period covered by the above mentioned force majeure events is required to be added to the time frame mentioned above. The Hon'ble HARERA has also adopted the similar view and has provided extension of the completion date as per its order no. 9/3- 2020 HARERA/ GGM (Admn) dated 26.05.2020.
- XIII. That the complainant has made part-payment towards the total sale consideration and is bound to make payment towards the registration charges, stamp duty, service tax at the applicable stage.
- XIV. That despite the above mentioned scenario, the respondent is on the last stages of the finishing work of the unit in question. However, the unit would be handed over to the complainant only after the payment of the remaining sale consideration and after completion of documentation formalities.
- XV. That the complainant is a real estate investor who has invested its money in the project of the respondent with an intention to make profit in a short span of time. However, its calculations have gone wrong on account of slump in the real estate market and it is now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to its unreasonable demands instead of abiding by contractual obligations of making timely payment towards the due amount.
7. 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 submissions made by the complainant.

**E. Jurisdiction of the authority**



8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

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

**Section 34-Functions of the Authority:**

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

11. 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.



12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by respondent:**

**F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration**

14. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference: ✓





**"39. Dispute Resolution by Arbitration**

*"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 as amended up to date. A sole Arbitrator, who shall be nominated by the Board of the Directors of the Company, shall hold the arbitration proceedings at the office of the Company at Noida. The Allottee hereby confirms that he shall have no objections to this appointment, more particularly on the ground that the Sole Arbitrator, being appointed by the Board of Directors of the Company likely to be biased in favor of the Company. The Courts at NOIDA, Uttar Pradesh shall to the specific exclusion of all other courts, alone have the exclusive jurisdiction in all matters arising out of/touching and/or concerning this Agreement, regardless of the place of execution or subject matter of this Agreement. Both the parties in equal proportion shall pay the fee of the "Arbitrator".*

15. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.
16. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National



Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

*...  
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

17. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and



accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

18. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration mandatorily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

**G. Findings on the relief sought by the complainant.**

- i. Direct the respondent to hand over the physical possession of the unit.**
- ii. To grant a sum of Rs. 29,33,960/- on account of furnishing of the flat as per annexure II of agreement dated 10.02.2019 entered into by parties.**
- iii. Direct the respondent to pay a sum of Rs. 48,30,000/- as interest which is calculated @ MCLR +2% p.a. with future interest @ 9.5% p.a. till final payment.**





19. The complainant intends to continue with the project and is 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."*

20. As per clause 18 of the agreement to sale provides for handing over of possession and is reproduced below:

*Clause 18*

*Barring unforeseen circumstances and force majeure events as stipulated hereunder, possession of the said apartment is proposed to be, offered by the company to the allottee on or before 28-Feb-2020, plus three months of grace period subject to timely payment of all amount as per the Agreed payment plan (Annexure-IV) including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard".*

21. **Due date of handing over of possession:** As per possession clause 18 of the agreement dated 10.09.2019 the possession of the unit was to be handed over on or before 28.02.2020 plus grace period of 3 months is also mentioned which comes out to be 28.05.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 28.11.2020.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges in terms of proviso to section 18 of the Act which 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.

23. 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.
24. 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., 21.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
25. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*





26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
27. On consideration of the documents available on record and submissions made by the parties, 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 dated 10.09.2019 executed between the parties. It is a matter of fact that agreement containing terms and conditions regarding the said unit was executed between the parties on 10.09.2019. As per the clause 18 of the agreement, the possession of the booked unit was to be handed over on or before 28.02.2020 plus grace period of 3 months is also mentioned which comes out to be 28.05.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 28.11.2020. The respondent has obtained the occupation certificate of the project by the competent authority on 28.05.2019. However the respondent till date has not offered the possession of the unit to the allottee/complainant. The respondent vide proceedings dated 09.02.2024, 17.05.2024 and 05.07.2024 acknowledged despite receiving the occupation certificate, the allottee's unit remains incomplete due to pending finishing works. It is matter of fact that the complainant/allottee had taken over the possession of the unit on 14.08.2024. The authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations within the stipulated period.





28. Accordingly, 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 the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainant to the respondent from the due date of possession i.e., 28.11.2020 till the handing over of possession of the allotted unit i.e., 14.08.2024 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

**iv. Direct the respondent to pay a sum of Rs. 6,00,000/- as mental harassment and agony.**

**v. Cost of Rs. 1,25,000/- to be paid to the complainant.**

29. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief 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 pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid





by the complainant from the due date of possession i.e., 28.11.2020 till the handing over of possession of the allotted unit i.e., 14.08.2024 as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - iv. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.
31. Complaint as well as applications, if any, stands disposed off accordingly.
32. File be consigned to registry.

Dated: 21.03.2025

**HARERA**  
**GURUGRAM**

(Ashok Sangwan)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram