

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

Complaint no.: 4568 of 2024
Date of decision:- 02.07.2025

Esha Mehra
R/o: - 5519, Orchard crescent Lane,
DLF Phase-4, Gurugram, Haryana.

Complainant

Versus

M/s. French Buildmart Private Limited
Regd. office: N-8, Ground Floor, Panchsheel Park,
New Delhi-110017.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shajat Kataria (Advocate)

Complainant

Garvit Gupta (Advocate)

Respondent

ORDER

1. The present complaint dated 25.09.2024 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 as provided 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*.

A. Unit and project related details

2. 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 project	"The Cityscape"
2.	Nature of project	Commercial unit
3.	Location of project	Sector-104, Gurugram, Haryana.
4.	RERA registered	Registered Vide registration no.02 of 2022 Dated-24.01.2022.
5.	DTCP Licence	Licence no. 43 of 2010 Dated-08.06.2010
6.	Date of execution of Buyer's Agreement	28.04.2014 (As on page no. 22 of complaint)
7.	Unit no.	036/B, Floor-Ground, Tower-Phase-I

		(As on page no. 28 of complaint)
8.	Unit area	350 sq.ft. [Super-Area] (As on page no. 28 of complaint)
9.	Possession clause	<p>Clause 7</p> <p>Possession</p> <p>(a) The Excavation work has already began on the project land much before the date of execution of this Agreement and the same must not be misunderstood with or shall be considered as the date of commencement of construction of the Project. The Company endeavors to offer the possession of the Unit in the Commercial Complex to the Allottee(s) within a period of 36 (thirty Six) months from the date of commencement of construction of the project hereof i.e., the date on which raft of the entire Project must be casted (the "Commencement of Construction") and this date shall be duly communicated to the Allottee(s), subject to Force Majeure (defined</p>

		<p><i>hereinafter in Clause 26) and/or any other reason beyond the control of the Company.....</i></p> <p><i>(b) The Allottee(s) understands and agrees that Company shall be entitled to an extension period of 180 (one hundred and eighty) business days over the said period of 36 months (the "grace Period")</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 34 of complaint)</p>
10.	Due date of possession	<p>16.12.2017</p> <p>[Calculated 36 months from 16.12.2013 plus 180 days plus further grace period of 180 days]</p> <p>[Casting of raft of entire project -16.12.2013 on page no. 70 of reply]</p>
11.	Sale consideration	<p>Rs.28,00,000/-</p> <p>(As per payment plan on page no. 65 of reply)</p>
12.	Amount paid	<p>Rs.27,67,879/-</p> <p>(As per the calculation sheet on page no. 98 of reply)</p>
13.	Occupation certificate	28.11.2022

		(As on page no. 93 of reply)
14.	Offer of possession	27.12.2022 (As on page no. 86 of reply)

B. Facts of the complaint:

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

- I. That the unit in question i.e. 36/B, Ground Floor, admeasuring 350 sq. ft. is situated in the project of the respondent namely, "The Cityscape" situated at Sector-66, Gurugram, Haryana. The allotment/acknowledgement letter was issued to the complainant on 19.04.2012 by the respondent.
- II. That the Buyer's Agreement was executed between the parties on 28.04.2014. The total sale consideration of the unit was Rs.32,46,250/- The complainant was greatly influenced by the fancy brochure which depicted that the project will be developed and constructed as state of the art and one of its kinds with all modern amenities and facilities, which led to the purchase of the property in question, by the complainant.
- III. That as per clause 7(b) of the Buyer's Agreement, the respondent had to offer the possession of the said apartment to the complainant within 36 months plus 6 months grace period i.e. 01.08.2015, with further additional grace period of 6 months i.e. 01.02.2016 from the date of payment which was mentioned in clause 7(b) of Buyer' Agreement, which reads as:

Clause 7(b): 'The Allottee(s) understands and agrees that company shall be entitled to an extension period of 180 (One Hundred and eighty) business days

*over the said period of 36 months (the "**Grace Period**") for handing over the possession of the Unit to the Allottee(s). If the possession of the Unit gets further delayed due to any reason and/or conditions/ events which are unforeseeable then the Company shall be entitled to an additional grace period of 180 (One Hundred and eighty) business days (the "**Additional Grace Period**") over and above to said Grace Period.'*

- IV. That the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the allottee. The respondent has breached the fundamental term of the contract by inordinately delaying the delivery of the possession by 103 months as per the Buyer's Agreement and still the condition of the unit is not habitable with various flaws. The complainant had to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
- V. In accordance with clause 7(b) of the Buyer's Agreement (BA), the respondent was required to provide possession of the specified unit by 28.04.2016, inclusive of a period of 36 months plus an additional 12 months grace period. Since the offer of possession, no work has been done by the respondents in the said unit with various flaws which are clearly evitable. This action constitutes a breach of contract, particularly since the agreement included a construction-linked plan and stipulated possession by 28.04.2016. Consequently, the respondent was not entitled to raise further demands from the complainant.
- VI. Even after multiple visits to the project site still no progress is observed. Additionally, the complainant incurred interest expenses on the amount paid to the respondent. The occupation certificate/completion certificate of the project has still not been obtained by the respondent-promoter. The allottee cannot be expected to wait endlessly for taking

possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-

- i. Direct the respondent to pay delay interest @ 18% p.m. starting from February 2016 till possession of unit as penalty to complainant towards delay in handing over the property in question.
- ii. Directing the respondent to handover possession of unit duly completely in all respect i.e. in habitable condition and in conformity of the specification to the Complainants as expeditiously as possible;
- iii. Direct the respondent to give the details of the unit as per the PLC and also the size of the said unit.
- iv. Direct the respondent to give the details of the rate charged regarding the common area maintenance of the allotted unit and revise the rate for maintenance as Rs.21/- per sq. ft. is exorbitant amount.
- v. Direct the respondent to pay an amount of Rs.1,00,000/- as compensation towards mental agony caused to the complainant.
- vi. Direct the respondent to pay an amount of Rs.1,00,000/- towards the litigation expenses for the filing of the complaint.

D. Reply filed on behalf of respondent:

5. The respondent has made the following submissions:

- I. That the present complaint is not maintainable in law or on facts. The complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect

understanding of the terms and conditions of the Buyer's Agreement dated 28.04.2014, as shall be evident from the submissions made in the following paras of the present reply.

- II. That the complaint is barred by limitation. The so called cause of action as per the version of the complainant arose prior to the Act. The false and frivolous complaint is liable to be dismissed on this ground as well.
- III. That the complainant is not "allottee" but an investor who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainant as a speculative investment and not for the purpose of self-use.
- IV. That the complainant approached respondent sometime in the year 2012 for purchasing a unit in its upcoming project "The Cityscape" situated in Sector 66, Gurugram. The complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of respondent to undertake development of the same, the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- V. That thereafter the complainant vide application form dated 11.02.2012 applied to the respondent for provisional allotment of a unit in the project. The complainant was allotted an independent unit bearing no. 036/B admeasuring 350 sq.ft. (super area) located on the Ground Floor in the said project vide provisional allotment letter dated 15.06.2013. However, after issuing offer of possession, the super area of the unit was revised to 312 sq. ft and accordingly sale consideration amount has also

been revised. The complainant had consciously and willfully opted for a "construction linked plan" for remittance of the sale consideration for the said unit.

- VI. That the Buyer's Agreement was executed between the complainant and respondent on 28.04.2014. It is pertinent to mention that the complainant had voluntarily executed the buyer's agreement with open eyes after carefully going through the terms and conditions mentioned therein. No objections whatsoever were raised by the complainant against the terms of the allotment, and it was understood that the terms of the agreement have been decided mutually between the parties.
- VII. That commencement of construction at the project site/casting of raft had taken place by 16.12.2013. Thus, as per Clause 7 of the Agreement, the date of start of construction was 16.12.2013.
- VIII. That the "high street plan" as had been initially conceptualized by the associate company of the respondent would not have been conducive for commercial success for the said project. Therefore, certain modifications were necessary to be made in the building plans for the benefit of the allottees. It is submitted that the respondent had applied to the concerned statutory authority vide letters dated 15.12.2018 and 03.04.2019 for amendment/revision in building plans. It is pertinent to mention that the revised building plans had been sanctioned by the concerned statutory authority on 11.05.2020 vide Memo No. ZP-661/JD(RD)/2020/7824 and revised building plans for the said project was sanctioned by the concerned statutory authority on 11.05.2020 vide Memo No. ZP-661/JD(RD)/2020/7824.
- IX. That the time consumed by the authorities in sanctioning the revised building plans is beyond the control of the respondent and therefore,

the said time period must not be construed as a delay. The associate Company of the respondent has duly complied with the requirements put forth by the concerned authorities in order to make the necessary amendment /changes in the building plans. Furthermore, the respondent had also made payment of substantial amounts to the concerned authorities in order to avail the Transit Oriented Development (TOD) benefits and get the approvals with respect to revised building plans.

- X. That vide letter dated 06.07.2017, the respondent applied to the Director, Town & Country Planning Department, Haryana, Chandigarh for increase in FAR from 175 to 350. The in-principal approval for grant of benefit under TOD policy for enhancement of FAR had been granted to the respondent on 22.03.2018. Subsequently, final permission with respect to benefit under TOD policy for enhancement of FAR had been granted to the respondent on 06.02.2019.
- XI. That the rights and obligations of the complainant as well as respondent are completely and entirely determined by the covenants incorporated in the Buyer's Agreement. As per Clause 7 of the buyer's agreement the possession of the said unit would be handed over to the complainant within a period of 36 months from the date of casting of the raft for the project (16.12.2013). Furthermore, the respondent was also entitled to a cumulative grace period of 360 business days (grace period + additional grace period) over and above the said period of 36 months for handing over of possession of the said unit to the complainant. The same was subject to multiple factors including but not limited to timely payment of consideration amount by the complainant, force majeure

factors, any reason beyond the control of respondent, any action of the Government etc.

- XII. That the construction work at the project site had been halted since November, 2017 on account of the ban imposed by the Hon'ble Supreme Court over all construction activities in Delhi-NCR. This was after taking into account the drastic deterioration in air quality in and around the national capital. Moreover, as the respondent was mobilizing the workforce at the project site, the lockdown on account of Covid-19 pandemic was imposed by the Government on 24.03.2020 which continued till 09.05.2020. This also severely affected the progress of the construction work at the site.
- XIII. That despite the same, the respondent was throughout transparent in its dealings with the complainant and from time to time updated her about the status of the project of the respondent.
- XIV. That the complainant have been continuous defaulters from the very inception. Despite being aware that timely payment of the installments amount was the essence of the allotment, the complainant miserably failed to adhere to the timelines stipulated in the demand letters from time to time. It is submitted that vide demand letter dated 20.09.2021 the respondent had demanded Rs.4,46,600/- including previous dues from the complainant. The balance due payment was accordingly carried forward in the Offer of possession which was subsequently sent to the complainant by the respondent.
- XV. That the respondent completed the construction of the said project and offered possession of the unit vide letter dated 27.12.2022. The Occupation certificate of the project was granted by the concerned authorities on 28.11.2022. The respondent accordingly at the time of

offer of possession demanded the remaining amount as per the terms of the Agreement.

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 these undisputed documents and submission made by the parties.

F. 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.

F. I Territorial jurisdiction

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 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.

F. II Subject matter jurisdiction

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;

10. 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 complainants at a later stage.

G. Findings on objections raised by the respondent

G.I Objection regarding complaint being barred by Limitation.

11. 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.
12. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo 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.

13. In the present matter the cause of action arose on 27.12.2022 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 25.09.2024 which is 1 year 8 months and 28 days from the date of cause of action. The Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

G.II Objection regarding complainant being "Investor" and not "Consumer"

14. The respondent has taken a stand that the complainant is an investor and not consumer. Therefore, it is not entitled to the protection of the Act and also not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder.

Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of **Rs.27,67,879/-** to the promoter towards purchase of an unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G.III. Objection regarding delay in construction due to certain Force majeure circumstances.

16. The respondent has raised a contention that the construction of the project was delayed due to force majeure conditions such as 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. In the present case, the 'Buyer's Agreement' was executed between the parties on 28.04.2014. As per clause 7 of the agreement dated 28.04.2014, the respondent had to offer possession of the unit to the complainant within a period of 36 (Thirty Six) months from the date of commencement of construction of the project. Also, a grace period of 180 days is agreed between the parties over and above the said period of 36 months. As per respondent's submission in its reply at page no. 70 of reply, the respondent has stated that the casting of raft of the entire project commenced on 16.12.2013, thus the date of start of construction was 16.12.2013. The period of 36 months is calculated from the date of commencement of construction i.e., 16.12.2013 also, the grace period being unqualified is granted in favour of the respondent. As per clause 7(b) the parties agreed for an additional grace period of 180 days , over and above the grace period of 180 days. The relevant clause is reproduced below:

✓

"The Allottee(s) understands and agrees that Company shall be entitled to an extension period of 180 (one hundred and eighty) business days over the said period of 36 months (the "Grace period"), for handing over the possession of the Unit to the allottee(s). If the possession of the Unit gets further delayed due to any reason and/or conditions/events which are unforeseeable then the Company shall be entitled to an additional grace period of 180 (one hundred and eighty) days (the "Additional Grace Period") over and above the said Grace Period.

17. Thus, the due date of possession comes out to be 16.12.2017. The respondent has stated that respondent had applied to the concerned statutory authority vide letters dated 15.12.2018 and 03.04.2019 for amendment/revision in building plans and the revised building plans had been sanctioned by the concerned statutory authority on 11.05.2020 vide Memo No. ZP-661/JD(RD)/2020/7824 and the time consumed by the authorities in sanctioning the revised building plans is beyond the control of the respondent and therefore, the said time period must not be construed as a delay. Furthermore, the respondent had also made payment of substantial amounts to the concerned authorities in order to avail the Transit Oriented Development (TOD) benefits and get the approvals with respect to revised building plans. Vide letter dated 06.07.2017, the respondent applied to the Director, Town & Country Planning Department, Haryana, Chandigarh for increase in FAR from 175 to 350. The in-principal approval for grant of benefit under TOD policy for enhancement of FAR had been granted to the respondent on 22.03.2018. Subsequently, final permission with respect to benefit under TOD policy for enhancement of FAR had been granted to the respondent on 06.02.2019. The respondent is seeking exclusion of the said period that

has been taken by the authorities to get the approvals for revised building plans. The Authority is of the view that the said period as aforesaid mentioned has not been declared as "zero-period" by the competent authorities and a grace period of 180 days over and above the promised due date and also, additional grace period of 180 days has already been provided to the respondent. Further, the respondent has stated that due to the outbreak of Covid-19 the project was stalled. Since, the due date of possession was prior to the coming of Covid-19, no further extension is granted to the respondent.

H. Findings on the relief sought by the complainant.

H.I Direct the respondent to pay delay interest @ 18% p.m. starting from February 2016 till possession of unit as penalty to complainant towards delay in handing over the property in question.

H.II Direct the respondent to handover possession of unit duly completely in all respect i.e. in habitable condition and in conformity of the specification to the Complainants as expeditiously as possible.

18. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant booked a unit in the project namely "The Cityscape", being developed by the respondent in Sector-104, Gurugram. The complainant was allotted a unit bearing no. 036/B in Tower-Phase-I on Ground Floor, in the project "The Cityscape" situated in Sector 104 of the respondent for a sale consideration of Rs.28,00,000/- and they have paid a sum of Rs27,67,879/- till date. The Buyer's Agreement dated 28.04.2014 was executed between the complainant and the respondent.

19. In the present complaint, 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

"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. **Due date of handing over possession and admissibility of grace period:** As per clause 7(a) of the Agreement dated 28.04.2014, the respondent was obligated to complete the construction of the project and hand over possession of the subject unit within a period of 36 months from the date of commencement of construction of the project i.e., the date on which raft of the entire project must be casted. Further, as per clause 7(b) of the agreement dated 28.04.2014, a grace period of 180 days has been agreed over and above the said period of 36 months between the parties. Further as per clause 7(b) of the agreement dated 28.04.2014, an additional grace period of 180 days was agreed between the parties over the above the grace period. The said clause is reiterated below:

" Clause 7

POSSESSION

(b) The Allottee(S) understands and agrees that Company shall be entitled to an extension period of 180 (one hundred and eighty) business days over the said period of 36 months (the "Grace Period"), for handing over the possession of the Unit to the Allottee(s). if the possession of the Unit gets further delayed due to any reason and/or conditions/events which are unforeseeable then the Company shall be entitled to an additional grace period of 180 (one hundred and eighty)

business days (the "Additional Grace period") over and above the said Grace Period."

21. As per respondent's submission in its reply at page no. 70 of reply, the respondent has stated that the casting of raft of the entire project commenced on 16.12.2013, thus the date of start of construction was 16.12.2013. The period of 36 months is calculated from the date of commencement of construction i.e., 16.12.2013 also, the grace period being unqualified is granted in favour of the respondent. As per clause 7(b) the parties agreed for an additional grace period of 180 days , over and above the grace period of 180 days. As per respondent's submission in its reply at page no. 70 of reply, the respondent has stated that the casting of raft of the entire project commenced on 16.12.2013, thus the date of start of construction was 16.12.2013. The period of 36 months is calculated from the date of commencement of construction i.e., 16.12.2013 also, the grace period being unqualified is granted in favour of the respondent. As per clause 7(b) the parties agreed for an additional grace period of 180 days , over and above the grace period of 180 days. Thus, the due date of possession comes out to be 16.12.2017.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant intends to continue with the project and is seeking delay possession charges. However, 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.

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., 02.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
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:

"(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;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
27. 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 7 (a) and (b) of the Agreement dated 28.04.2014, the due date comes out as 16.12.2017. Occupation Certificate was granted by the concerned authority on 28.11.2022 and thereafter, the possession of the subject unit was offered to the complainant on 27.12.2022. 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 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 28.04.2014 to hand over the possession within the stipulated period.

28. 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 28.11.2022. The respondent offered 27.12.2022, 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 complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she 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 till actual handing over of possession or offer of possession plus two months whichever is earlier.
29. 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 is entitled to delayed possession at prescribed rate of interest i.e., 11.10 % p.a. w.e.f. 16.12.2017 till the expiry of 2 months from the date of offer of possession (27.12.2022) which comes

out to be 27.02.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. Further, the respondent is directed to handover possession of the unit to the complainant within a period of 30 days of this order.

H.III Direct the respondent to give the details of the unit as per the PLC and also the size of the said unit.

30. The Authority observes that as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in the Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Further, as per Section 11(4)(a) of the Act, 2016, the promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act or rules and regulations made thereunder or the agreement for sale. Therefore, in view of the above, the respondent/promoter is directed to provide specifications regarding unit in question to the complainant-allottee within a period of 1 month from the date of this order.

H.IV Direct the respondent to give the details of the rate charged regarding the common area maintenance of the allotted unit and revise the rate for maintenance as Rs.21/- per sq. ft. is exorbitant amount.

31. The respondent is directed to charge the common area maintenance in terms of the Agreement dated 28.04.2014.

H.V. Direct the respondent to pay an amount of Rs.1,00,000/- as compensation towards mental agony caused to the complainant.

H.VI Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant along with other charges.

32. The complainant is seeking the above mentioned reliefs w.r.t compensation.

The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

I. Directions of the authority

33. 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):

- i. The respondent is directed to handover physical possession of the unit to the complainant within 30 days of this order.
- ii. The respondent is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 16.12.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority 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.

- iii. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - iv. The respondent is directed to provide an updated Statement of Accounts to the complainant within a period of one week and thereafter, the complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 60 days of the order.
 - vi. The respondent is directed to provide specifications regarding unit in question to the complainant-allottee within a period of one month from the date of this order.
 - vi. The respondents shall not charge anything from the complainant which is not the part of the agreement.
34. Complaint stands disposed of.
 35. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.07.2025