



HARERA
GURUGRAM

Complaint No. 3186 of 2023

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

Complaint no. : 3186 of 2023
Date of complaint : 24.07.2023
Date of order : 16.07.2025

Sanjay Rajpal,
R/o: - A-27, Jalvayu Vihar,
Opposite Shivam Hospital, Sector-30,
Gurugram, Haryana-122001.

Complainant

Versus

M/s Imperia Structures Limited.
Regd. Office At: A-25, Mohan Cooperative Industrial
Estate, Mathura Road, New Delhi-110044.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Pawan Kumar Ray (Advocate)
Shubham Mishra (Advocate)

Complainant
Respondent

ORDER

1. This 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 thereunder 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. N.	Particulars	Details
1.	Name of the project	"Mindspace", Sector 52, Gurugram
2.	Project area	8.36 acres
3.	Nature of the project	IT Park/Cyber Park
4.	DTCP license no. and validity status	86 of 2010 dated 23.T0.2010 valid upto-22.10.2020
5.	Name of licensee	Baakir Real Estate Pvt Ltd and 2 others
6.	RERA Registered/ not registered	240 of 2017 dated 25.09.2017 for 2.2 acres
7.	RERA registration valid up to	31.12.2020
8.	Virtual Office Space bearing no.	56, 10 th Floor, Tower-A (Page no. 37 of the complaint)
9.	Unit area admeasuring	501.33 sq. ft. (super area) (Page no. 37 of the complaint)
10.	Date of execution of agreement to sell	13.07.2018 (Page no. 30 of the complaint)
11.	Possession clause	46. Force Majeure <i>The compliance of the terms and conditions of this Agreement and the Project by the Company shall be subject at all times to "Force Majeure" conditions as defined below: -.... Subject to the aforesaid and subject to the Allottee not being in default under any part of this Agreement including but not limited to the timely payment of the Total Price and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company endeavours to hand over the possession of the Unit to the Allottee within a period of 48 (forty eight) months, with a further grace period of 6 (six months, from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work</i>



		<i>at the Project Land and this date shall be duly communicated to the Allottee."</i>
12.	Date of commencement of construction	Not provided
13.	Due date of possession	13.01.2022 [Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
14.	Lease Rental Clause	34. Leasing Arrangement: (a) <i>The company will pay to the allottee Rs.29,077/- per month as committed return for upto three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier..."</i> (e) <i>"The Company expects to lease out the Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.58/- per sq. ft. super area per month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.58/- per sq.ft. super area per month, then the Company shall pay to the Allottee a one time compensation calculated at the rate of @Rs.120/- (rupees one hundred twenty only) per sq. ft super area for every one rupee drop in the lease rental below Rs.58/- (rupees fifty eight only) per sq.ft. super area per month. This provision shall not apply in/case of/second and subsequent leases/lease terms of the Unit."</i> (f) <i>"However, if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum lease rental of Rs.58/- per sq.ft. super area, then, the Allottee shall pay to the Company</i>

		<i>additional basic sale price calculated at Rs.60/- (rupees sixty only) per sq. ft super area of the Unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs.58/- (rupees fifty eight only) per sq. ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/ lease terms of the Unit."</i>
15.	Total sale consideration as per applicant file at page no. 64 of reply	Rs.44,95,327/-
16.	Amount paid by the complainant as per applicant file at page no. 64 of reply	Rs.45,20,492/-
17.	Occupation certificate /Completion certificate	02.06.2020 (as submitted by the respondent vide written submissions dated 12.06.2025)
18.	Fit-out offer of possession	30.11.2019, 22.06.2020 (page 71 of complaint), (page 68 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the complainant in June 2018, made an application for allotment of a virtual office space in the project of the respondent named "Imperia Mindspace" situated at Sector- 62, Gurugram.
- II. That among various payment plan available to pay the consideration of the unit, there was a down/flexi payment plan option for office spaces under which, upon payment of 100% of BSP within 30 days of booking, the allottee was eligible to receive monthly assured return of Rs.58/- p. sq. ft. for three years after possession. The respondent assured that if this plan is opted and 100% or a considerable amount of BSP is paid within

30 days of booking, the allottee will be eligible to receive monthly assured return.

- III. That the complainant trusted the assurances given by the respondent and opted for down/flexi payment plan to avail the monthly assured return scheme and lease rent scheme. The complainant made a payment of Rs.24,36,464/- via cheque no. 000076 dated 30.06.2018 drawn on Andhra Bank. However, the respondent has only acknowledged payment of Rs.22,55,985/- and Rs.1,80,479/- was adjusted against service tax. Thereafter, on 13.07.2018, a unit buyer's agreement was executed between the parties vide which unit bearing no. 56, 10th Floor, Tower-A having super area of 501.33 sq. ft. was allotted to him for a total BSP of Rs.37,59,975/-.
- IV. That as per clause 46 of the unit buyer's agreement dated 13.07.2018, the possession of the unit was to be offered to the complainants within 48 months from the date of commencement of construction of the project with a further grace period of 6 months.
- V. That the complainant paid the balance amount Rs.16,24,308/- including taxes as per the agreement vide cheques dated 31.03.2019 and subsequently the receipts dated 26.06.2019 were issued by the respondent.
- VI. That in the Annexure A (payment plan) of the unit buyer's agreement dated 13.07.2018, the respondent acknowledged receipt of Rs.22,55,985/- from the complainant till the time of execution of the agreement and thus was eligible for the monthly assured return. The assured return opted by the complainant was duly noted in the agreement in clause 33 wherein the respondent agreed to pay the assured return to the complainant in terms of the Annexure A-1 of the agreement.

- VII. That the respondent acknowledged this fact and in Annexure A-1 payment plan of the agreement admitted that the complainant is entitled to receive assured return of Rs.20,680/- from 13.09.2018 onward till the possession of the unit is offered to the complainant. In terms of the agreement, the respondent paid assured return @Rs.18,612/- (after deduction of TDS @10% of Rs.20,680/-) from July 2018 till March 2019 and @Rs.31,019/- (after deduction of TDS @10% of Rs.34,466/-) from April 2019 till October 2019.
- VIII. That the respondent offered possession for fit out and commencement of lease rent for the unit allotted to the complainant in November 2019.
- IX. That the complainant had availed lease rent scheme from the respondent. As per clause 34 of the agreement, the respondent agreed to pay the complainant Rs.29,077/- per month from date of notice of possession of the unit upto three years or till the same is put on lease, whichever is earlier.
- X. That vide letter dated 30.11.2019, the respondent offered possession for fit out and intimated about commencement of lease rent for the unit allotted to the complainant. The respondent informed that the respondent had to pay lease rent from December 2019 till July 2022 or till the date the unit is leased out to any intending lessee whichever is earlier. The respondent promised that they shall pay the complainant a lease rent @Rs.58/- per sq. ft. i.e. Rs.28,704/- per month subject to payment of Rs.4,59,720/-. Pursuant to receiving the letter dated 30.11.2019, the complainant made the payment of Rs.4,59,720/- to the respondent vide cheque no. 000106 dated 09.12.2019.
- XI. That upon receipt of the balance outstanding payment of Rs.4,59,720/- as per the letter dated 30.11.2019, the respondent handed over cheques to the complainant for monthly lease rent @Rs.26,169/- (after deduction



of TDS @10% of Rs.29,077/-) from December 2019 (Rs.18,571/- from 10.12.2019 to 31.12.2020) to March 2020. It is pertinent to mention that out of the 4 cheques handed by the respondent to the complainant two cheques bearing no.s 011944 dated 22.03.2020 drawn on ICICI Bank for Rs.26,169/- and 011945 dated 22.04.2020 drawn on ICICI Bank for Rs.26,169/- were not cleared and were bounced back due to insufficient funds. Thereafter, the complainant visited their office and asked them to pay the amount through online transfer. After several visits and multiple follow ups, the respondent paid the amount against the bounced cheque through NEFT.

- XII. That the complainant has paid Rs.45,20,492/- to the respondent as full and final consideration of the unit. However, the respondent has failed to fulfil its contractual obligation and failed to pay the monthly lease rent from May 2020 till July 2022 as per the letter dated 30.11.2019. Further, the respondent has failed to lease out the unit to the intended lessee till today. Therefore, as per the terms of the clause 34 of the agreement, the respondent is obligated to pay Rs.29,077/- to the complainant as lease rent till today and further till the unit is leased out.
- XIII. That the complainant has approached the respondent seeking outstanding lease rent from May 2020 till today, but no heed was paid to such requests of the complainant by the respondent. That to date, the respondent has neither leased out the unit of the complainant to the intended lessee nor paid the outstanding monthly lease rental. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to lease out the unit of the complainant to intended lessee and to pay the outstanding monthly lease rent due and

payable from May 2020 till unit is leased out to intended lessee alongwith interest.

- ii. Direct the respondent to pay delay possession charges.
- iii. Direct the respondent to pay travel expense of Rs.2,00,000/-.

D. Reply by the respondent:

5. The respondent vide its reply as well as written submissions dated 12.06.2025 has contested the complaint on the following grounds:

- i. That the complainant at his own free will, booked a virtual space admeasuring 501.33 sq.ft. on 02.07.2018, in our project 'Imperia Byron', which was subsequently renamed as "Mindspace", located at Sector 62, Gurugram for a total sale consideration of Rs.44,95,327/-including applicable tax and additional miscellaneous charges. The complainant was allotted virtual office space, 10th Floor for a possession linked plan. vide unit buyer's agreement dated 13.07.2018.
- ii. That the construction of the said project was completed way back and the occupancy certificate was applied for. The occupancy certificate has been received on 02.06.2020 by the respondent.
- iii. That the respondent has time and again issued offers of possession and demand notices to the complainant after attaining the occupancy certificate.
- iv. That the respondent received initial approval of building plans on 04.12.2015 and started the milestone construction of the present project. Subsequent the respondent started the construction and also began allotting units to the concerned allottees.
- v. That the complainant has not revealed this fact that he had delayed and defaulted in making payment towards the unit, time and again. However, despite the said inordinate delays and defaults, the respondent issued them offer of possession for fit-out. It must be further noted that after pandemic, the working protocols of the IT sector has

transformed into work-from-home, due to which the real estate has immensely suffered and despite of which, the respondent is adhering to the promises.

- vi. That it is a matter of fact that the respondent directs all the payments received from the allottees, towards the construction of the undertaken project and thus, default in depositing the payment by the allottees disrupts the construction speed and hinders the completion of the committed project, which eventually affects the delivery of the project to allottees. It is also necessary to bring in notice that despite of several hindrances and certain force majeure, such as recent Covid-19 pandemic, the respondent has successfully procured the occupancy certificate dated 02.06.2020, which exhibits the bona fide intention of the respondent to complete the project.
- vii. That owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court issued a ban on construction activities in the region from 01.11.2019 onwards, which was a blow to realty developers in the city.
- viii. That clause 57 of the said unit buyer's agreement states that if the dispute or difference shall arise between the parties, the same shall be referred for arbitration proceedings.
- ix. That the complainant has misled this Authority and has concealed the fact that they were at default in paying the maintenance cost and services charges, among other incidental charges, for the period of lease to the developer or to any other maintenance agency appointed by the developer, and the same remains unpaid by the complainant. In addition to this, as the offer of possession has already been issued to the complainant, the respondent is also liable to recover maintenance charges from the complainant to the tune of Rs.10/- per sq. ft. per month

plus GST and also liable to recover holding charges of Rs.20/- per sq. ft. per month plus GST, calculated from the date of offer of possession to the date of realization of this present complaint, along with maintenance and holding charges and the same has been sent to complainants vide letter on 09.11.2023.

- x. That the OC dated 02.06.2020 refers to the building as "Tower C", as the application for OC was made by M/s Baakir Real Estate Pvt. Ltd. for the entire land parcel. However, the same building is designated as "Tower A" in the BBA executed by Imperia Structures Ltd. under the "Mindspace" project. This discrepancy in nomenclature is a result of internal project structuring and in no way affects the physical identity, location, or area of the unit. The tower remains the same in structure and substance, as per the sanctioned plans. The OC clearly describes the building as comprising ground floor to 13th floor. No prejudice is caused to the complainant due to this nomenclatural variation.
- xi. That the respondent has duly paid a total of Rs.4,97,930/- to the complainant towards assured returns from August 2018 to March 2020, in terms of the BBA dated 13.07.2018 and as per clause 46 of the MoU dated 13.07.2018, the obligations of the respondent were subject to force majeure events, including pandemics and government-imposed lockdowns. The outbreak of COVID-19 and the consequent disruption of commercial activity directly impacted the continuation of assured returns beyond March 2020. In such force majeure circumstances, no breach or default can be attributed to the respondent.
- xii. That the respondent also issued letters dated 12.12.2022 and 19.08.2023, duly informing the complainant regarding the accrual of maintenance and holding charges owing to his persistent failure to take possession of the allotted unit and to execute the conveyance deed.

xiii. That, in consequence of the complainant's failure to execute the conveyance deed, holding charges were imposed. A letter dated 09.11.2023 was issued to the complainant, calling upon him to pay Rs.2,30,712/- towards maintenance and GST and Rs.4,61,424/- towards holding charges, amounting to a total of Rs. 6,92,136/-. Further, the primary relief sought by the complainant pertains to lease rent, which in essence, is a claim for compensation/damages. Under the provisions of the Act, 2016, such claims fall exclusively within the jurisdiction of the Adjudicating Officer, and not before this Authority. Consequently, the present complaint is liable to be dismissed for want of jurisdiction.

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 submissions made by the complainant.

E. Jurisdiction of the Authority:

7. The respondent has raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 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 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.

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.

F. Findings on the objections raised by the respondent:

F.I Objection regarding the circumstances being 'force majeure':

9. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as Covid-19 outbreak, ban on construction due to orders passed by Hon'ble Supreme Court, non-payment of instalment by different allottees of the project, etc. The authority observes that the due date of possession was 13.07.2021. 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 27.06.2023. As far as other contentions of the respondent w.r.t delay in construction of the project is concerned, the same are disallowed as firstly the orders passed by Hon'ble Supreme Court banning construction in the

NCR region was for a very short period of time and thus, cannot be said to impact the project of the respondent. Though, some allottees may not be regular in paying the amount due, but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the plea advanced in this regard is untenable.

F.II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

10. The respondent has 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. 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. Therefore, by applying same analogy the presence of arbitration

clause could not be construed to take away the jurisdiction of the authority.

11. 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 builders could not circumscribe the jurisdiction of a consumer. Further, 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. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his 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 necessarily.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to lease out the unit of the complainant to intended lessee and to pay the outstanding monthly lease rent due and payable from May 2020 till unit is leased out to intended lessee alongwith interest.

12. The complainant is seeking relief with respect to leasing of the complainant's unit and payment of lease rental as per the unit buyer's

agreement dated 13.07.2018. Vide clause 34 (c) of the buyer's agreement, the complainant has authorised the respondent to negotiate and finalize the leasing arrangement in respect of the unit, individually or in combination with other adjoining units, with any suitable tenant/s. Further, vide clause 34(A)(a) of the agreement dated 13.07.2018, it was promised and assured to the complainant that an amount of Rs.29,077/- per month will be paid to him as committed return for upto three years from the date of notice of possession of the unit or till the same is put on lease, whichever is earlier. The relevant portion of clause 34 of buyer's agreement is reproduced below for the ready reference:

34. Leasing Arrangement:

"A. (a) the company will pay to the allottee Rs.29,077/- per month as committed return for upto three years from the date of notice of offer of possession of the unit or till the same is put on lease, whichever is earlier..."

13. Further as per Section 11(4)(a) of the Act of 2016, the promoter is responsible for all obligations and responsibilities as per the provisions of the Act or the terms agreed as per agreement for sale. The relevant portion of Section 11(4)(a) is reproduced below:

(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 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

14. The respondent vide 'offer of fit-out and commencement of lease rent' letter dated 30.11.2019, admitted its liability to pay lease rent from December 2019 till July 2022 or till the date the unit is leased out to any intended lessee, whichever is earlier. However, the counsel for the respondent vide written submissions dated 12.06.2025, has submitted

that occupation certificate for the tower in question was received by it from the competent authority on 02.06.2020. Therefore, the said offer of possession made before the grant of OC cannot be considered as a valid offer of possession. Further, it is to be noted that the the respondent after receipt of occupation certificate on 02.06.2020 issued an 'offer of possession for fit out and commencement of lease rent' letter dated 22.06.2020, but the unit of the complainant has not been put on lease till date. In light of the reasons mentioned above, the authority is of the view that as per the buyer's agreement dated 13.07.2018, it was obligation on part of the respondent to pay the committed lease rent and to put the unit of the complainant on lease. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in agreement dated 13.07.2018. Accordingly, the liability of the respondent to put the unit on lease and to pay committed lease rental as per unit buyer's agreement is still continuing. Hence, the respondent/promoter is liable to put the unit in question on lease and to pay committed lease rent at the agreed rate i.e., @Rs.29,077/- per month from the date of valid offer of possession i.e. 22.06.2020 till 3 years from that date i.e. 22.06.2023, as per the unit buyer's agreement dated 13.07.2018, after deducting the amount already paid on account of committed lease rent to the complainant.

G.II Direct the respondent to pay delay possession charges.

15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to Section 18(1) of the Act which 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."

16. **Due date of handing over possession:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018* observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**"*
17. In view of the above-mentioned reasoning, the date of execution of BBA i.e. 13.07.2018 is ought to be taken as the date for calculating due date of possession. 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 13.01.2022.
18. In the present complaint, the occupation certificate was granted by the competent authority on 02.06.2020. The respondent has obtained occupation certificate prior to the due date of handing over possession. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent has already obtained completion certificate in respect of the said project prior to the due date of handing over possession. Thus, no case for delay possession charges is made out under Section 11(4)(a) of the Act read with proviso to Section 18(1) of the Act. Accordingly, no direction to this effect.

G.III Direct the respondents to pay travel expense of Rs.2,00,000/- to the complainant.

19. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. 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.*, has held that an allottee is entitled to claim compensation & litigation charges under Sections 12,14,18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under Sections 12, 14, 18 and Section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under Section 31 read with Section 71 of the Act and Rule 29 of the Rules.

H. Directions of the authority:

20. 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):
- No case for delay possession charges is made out under proviso to Section 18(1) of the Act.
 - The respondent shall put the unit in question on lease as per the unit buyer's agreement dated 13.07.2018.
 - The respondent shall pay committed lease rent at the agreed rate i.e., @Rs.29,077/- per month from the date of valid offer of possession i.e. 22.06.2020 till 3 years from that date i.e. 22.06.2023, as per the unit buyer's agreement dated 13.07.2018, after deducting the amount already paid on account of committed lease rent to the complainant.



- iii. The respondent is directed not to charges any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
- iv. 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.
21. Complaint stands disposed of.
22. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.07.2025

HARERA
GURUGRAM