



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

Complaint no.: 1510 of 2024
Date of decision:- 23.07.2025

Karamvir Singh
R/o: - Hno.-1171, Sector-12,
Panipat, Haryana.

Complainant

Versus

M/s. Eminence Townships India Pvt. Ltd.
Regd. office: H-3/158, Second Floor,
Vikas Puri, New Delhi-122001.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shajat Kataria (Advocate)

Sumit Mehta (Advocate)

Complainant

Respondent

ORDER

1. The present complaint dated 16.04.2024 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Eminence Kimberly Suites", Sector-112, Gurugram, Haryana.
2.	Area of project	2.875 acres
	Nature of project	Serviced Apartment
3.	DTCP License no.	Licence no. 35 of 2012
4.	RERA registered	Registered Registration no. 74 of 2017 Dated- 21.08.2017
5.	Unit no.	B-0603, Floor-6 th (As on page no. 23 of complaint)
6.	Unit area	795 sq.ft. [Super-Area] (As on page no. 23 of complaint)
7.	Allotment letter	21.05.2013



		(As on page no. 19 of complaint)
7.	Date of execution of buyer's agreement	02.12.2013 (As on page no. 21 of complaint)
8.	Possession clause	<u>Schedule for possession of the said Unit</u> <i>27. The Company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said Project within 36 (Thirty Six) months (plus 6 months grace period) from the date of start of the ground floor slab of the particular tower in which the booking is made, subject to timely payment by the Allottee(s) of sale price and other charges due and payable according to the Payment Plan applicable to him/her/them and/or as demanded by the Company and subject to Force Majeure circumstances including but not limited to clause 27 and 28. The possession of the Said Unit(S) shall, however, be offered only after grant of completion/occupation certificate from the Competent Authority.</i> <i>[Emphasis supplied]</i>
9.	Due date of possession	31.01.2021 [Calculated 36 months from the date of start of ground floor slab i.e., 31.07.2017 + 6 months grace period]
10.	Total sales consideration	Rs.55,92,740/-

		(As per payment plan on page no. 47 of complaint)
11.	Amount paid by the complainants	Rs.38,89,760/- (As on page no. 134 of reply)
12.	Occupation certificate	11.07.2019
13.	Offer of possession	24.07.2019 (As on page no. 133 of reply)

B. Facts of the complaint:

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

- I. That the property in question i.e. Unit No. B-0603 admeasuring 795 sq. ft. situated at Eminence Kimberley Suites, Sector-112, Gurugram, Haryana, was booked by the complainant, in the year 2013. It is pertinent to mention here that the total cost of the unit including tax is Rs.59,90,992/- and since it was under construction linked scheme, hence the payment was to be made by the respondent as per the construction at the premises.
- II. That as per the Builder Buyer's Agreement dated 02.12.2013, the respondent undertook to handover possession of the said apartment to the complainant within 36 months from the date of booking i.e. 21.05.2013, with a further grace period of another 6 months, which was not disclosed to the complainant at the time of initial payment by the complainant against the said unit.
- III. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 88 months as per the registered Builder Buyer's Agreement. The complainant was made 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.

- IV. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts. Vide letter dated 24.07.2019, the respondent had offered possession to the complainant.
- V. That the respondent, vide the letter dated 30.07.2019 mentioned that the respondent has received Occupation Certificate on 11.07.2019 in respect of the tower in which the unit to the complainant was allotted and possession of the said unit was offered to the complainant, subject to payment of all amounts and requisites.
- VI. That subsequent thereto, the complainant had made a payment of Rs.29,14,000/- as payment towards the said flat after the surrender of the other flat against the said flat in question. Lastly, the complainant had made a payment of Rs.9,75,760/- as full and final payment towards the said flat.
- VII. That for the possession of the said unit, the complainant had even sent mail to the respondent on 15.03.2021, to which there was no response by the respondent. The son of the complainant on behalf of the complainant had visited the premises for possession of the said unit but again the respondent didn't bothered to look after the genuine demands of the complainant.
- VIII. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. Although it was mentioned in payment plan that 5% of Basic +IFMSD was to be paid at

the time of possession. Yet the complainant was compelled to pay full amount and is still the possession has not be handed over.

- IX. That the actual payment received by the respondent is Rs.59,90,992/- which included club, membership, service tax, CGST, SGST, power, backup charges etc. that the respondent had pressurised the complainant to make payment for getting possession which is yet not delivered even though it was mentioned in Annexure III of Builder Buyer agreement that such charges are to be paid after possession.
- X. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-
- Direct the respondent to handover possession of the said unit in question.
 - Direct the respondent to pay of delay interest @ 18% p.m. starting from 21.11.2016 till offer of possession as penalty to complainant towards delay in handing over the property in question
 - Direct the respondent to pay Rs.1,00,000/- as compensation towards mental agony caused to the complainant.
 - Direct the respondent to pay Rs.1,00,000/- towards the litigation expenses for the filing of the complaint.

D. Reply on behalf of respondent:

5. The respondent has made following submissions:

- I. That somewhere in the month of May 2013, the complainant had approached the respondent for booking of a commercial unit in one of the projects namely "Eminence Kimberly Suites" situated in Sector 112, Village Bajgerha, Gurugram, Haryana, and applied for a commercial unit vide an Application form dated 16.10.2012.
- II. That vide an allotment letter dated 21.05.2013, a unit bearing no. B-603, admeasuring 795 sq. ft. was allotted to the complainant. As per the terms of Application form, it was categorically agreed in Clause 13 that the construction of the said unit is proposed to be completed by the respondent within 36 months (plus 06 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made, subject to timely payment by the applicants of sale price, stamp duty, and other charges due and payable according to the Payment Plan and subject to force majeure circumstances. The possession of the said unit shall, however be offered only after grant of completion/occupation certificate from the Competent Authority. Thus, the question of duress and arbitrary agreement does not arise.
- III. That on 02.12.2013, a Builder Buyer's Agreement was executed between the complainant and the respondent. That as per the said agreement, it was clearly stated and mutually agreed in Clause 27, that subject to all exceptions, the respondent shall make all six months (plus 6 months grace period) from the date of start of the stilt ground floor roof slab of the particular tower in which the booking is made by the allottee. Furthermore, it was mutually agreed that if the possession of the said building is delayed due to Force Majeure conditions, then the company shall be entitled to extension of time of delivery of possession of the said

unit. It is needless to state that the terms as per the Application form was reproduced and agreed upon, the same terms were confirmed again in Builder Buyer Agreement.

- IV. That the complainants have not come with clean hands before the Authority and has suppressed material facts and thus the present complaint should be dismissed on the ground of 'Supressio Veri.
- V. That the complainant has misappropriated the fact that the respondent had offered the possession without providing basic amenities in the project such as water, electricity etc. whereas, the respondent has obtained the "Part Occupancy Certificate" and has provided all the required amenities at the project site.
- VI. That the complainant has concealed and suppressed the fact that the unit was purchased by him for commercial use, as he had enquired about leasing the property repeatedly over telephonic conversations, personal meetings and emails
- VII. That on 24.07.2019, the complainant was already communicated with the Offer of Possession but even after post-delivery of possession offered by the respondent and even post making payment of the dues, the complainant in order to evade from the maintenance charges has filed the present complaint with a mala-fide intention and sole motive of extracting huge money from the respondent.
- VIII. That the respondent has diligently invested all the money collected from the investors in the project itself and has never diverted any funds on any account and even if, for the sake of arguments, it is presumed, that the construction has got jeopardized then also it has purely been caused due to unfavourable and unforeseen circumstances, in the intervening periods



which has materially and adversely affected the project and were beyond the control of the respondent, the same are being set out herein under: -

- a. **An erroneous demand of EDC/IDC charges by the office of Director General of Town and Country Planning, Haryana, at Chandigarh (DTCP)**
- In the month of 19.03.2018, when the respondent was about to apply for Occupancy Certificate, it faced challenges in renewal of License for the said project and it was only after a period of 06 months i.e. on 03.08.2018, the DTCP reverted back to the respondent company vide letter bearing memo no.LC-2545/JE(MK)2018/23186, with erroneous demand and further after efforts of the respondent, the said demand was rectified and was notified back only on 01.02.2019. That further, on 11.07.2019, i.e., within 54 days from receipt of revised EDC/IDC demand, a Letter dated 27.03.2019 for submission of documents for issuance of Occupation Certificate was issued by the respondent on account of which, post lapse of 3 months, an occupancy certificate was issued on 11.07.2019. It is stated that the Occupancy Certificate, which is to be obtained before offer of possession was applied for immediately after said rectification. Thus, the Force Majeure existed from 19.03.2018 till 01.02.2019 i.e., approx. 11 Months.
- b. It is stated Ban on Construction Activities, following the order of National Green Tribunal and Pollution Control Board - On account of every halt due to NGT Orders or directions of the Pollution Control Board, the entire machinery of the respondent used to suffer adversely and it took long periods for the respondent to remobilize the entire construction activity and increased cost of construction. The delay on account of Force majeure is as follows:-

S.No	Year	Order dated	Closure of sites (From-To)	Delay, due to halt
1.	2016	10.11.2016	09.11.2016-15.11.2016	90 days
2.	2017	09.11.2017	09.11.2017-16.11.2017	75 days
3.	2018	14.06.2018	15.06.2018-16.06.2018	45 days
4.	2018	29.10.2018	01.11.2018-10.11.2018	45 days

5.	2018	24.12.2018	25.12.2018- 26.12.2018	35 days
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- IX. That even otherwise, the period of possession of the said unit, as per the builder buyer's agreement is to be counted from the **date of casting of the Ground Floor Roof Slab** i.e. starting from **31.07.2017**. Thus, in the terms of the Builder Buyer agreement, it is stated that the due date for possession was i.e. 42 months from the date of laying of Ground Floor Slab, subject to Force Majeure.
- X. That on account of delays due to NGT orders (09 Months and 20 days), Correction of erroneous EDC / IDC demand (11 months), overlaps with each other and caused a total period of force majeure as 18 Months. It is submitted that in the light of the above stated force Majeure, the works at the project site was to be completed on or before May 2019 and accordingly possession was to be offered.
- XI. That the work at the project site was completed by March 2019 and on 27.03.2019, the respondent had applied for Occupancy Certificate and the same was granted on 11.07.2019. It is submitted that the period taken by the Government Office for approval of the Application for occupancy certificate is also covered under force majeure and thus the force majeure period of 107 days is also exempted and thus the period for offer of possession was extended up to 31.08.2019.
- XII. That the offer of possession has already been issued by the respondent to the complainant on 24.07.2019, it's the complainant who is not taking the actual possession of his unit and the same is now due for execution of Conveyance Deed for which the complainant is liable to purchase the Stamp Duty and proceed with the execution of Sale Deed. Thus, the present

petition is liable to be dismissed as the offer of possession and its payment has been complied with and in accordance to the law and as per the terms of Builder Buyer's Agreement. Thus, at this stage, the request of the complainant for refund is neither legitimate nor permissible under law.

- XIII. That the complaint is not maintainable as the same is devoid of true facts and thus is liable to be dismissed at the very threshold, as the project stands duly completed. Thus, the complaint is pre-mature, especially in the light of the fact that the offer of possession has already been issued.
6. 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.

E. Jurisdiction of the authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. 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 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;

9. 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.

F. Findings on objections raised by the respondent:

F.I Objections regarding delay in project due to force majeure circumstances.

10. The respondent-promoter has raised an objection that the offer of possession has been delayed due to certain circumstances which were beyond the control of the respondent and stated that the delay was caused due to the NGT orders (09 Months and 20 days), Correction of erroneous EDC / IDC demand (11 months), governmental delays on account of Force Majeure conditions.
11. The Authority observes that as per Clause 27 of the Buyer's Agreement dated 02.12.2013, the respondent had to handover possession of the unit

to the complainants within 36 months (plus 6 months grace period) from the date of start of casting of the ground floor roof slab of the particular tower in which the unit of the complainant's is situated. As per the reply, the respondent admitted that the date for "Casting of ground floor roof slab" was 31.07.2017 and therefore the due date for handing over of possession was 31.01.2021 (36 months from the date 31.07.2017 plus grace period of 6 months). The respondent-promoter has raised an objection that the delay have been caused due to certain force majeure circumstances. However, the Authority is of the view that the circumstances stated by the respondent i cannot be excluded as the same were not due to any fault of the complainant. The grace period of six months is already granted in favour of the respondent-promoter being unqualified. Thus, no further relaxation is granted to the respondent-promoter in this regard.

G. Findings on the reliefs sought by the complainant

- G.I Direct the respondent to handover possession of the said unit in question.**
- G.II Direct the respondent to pay of delay interest @ 18% p.m. starting from 21.11.2016 till offer of possession as penalty to complainant towards delay in handing over the property in question.**

12. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant booked a unit bearing no. B-0603, on 6th floor admeasuring 795 sq.ft super-area in the project "Eminence Kimberly Suites" situated in Sector 112, Village Bajghera, Gurugram of the respondent for a sale consideration of Rs.55,10,940/- and have paid a sum

of Rs. 38,89,760/- till date. The Buyer's Agreement was executed between the complainant and respondent on 02.12.2013. As per Clause 27 of the Buyer's Agreement dated 02.12.2013, the respondent undertook to complete the construction of the project within 36 months from the date of start of casting of the ground floor roof slab of the particular tower in which the unit of the complainant's is situated. As per the reply, the respondent admitted that the date for "Casting of ground floor roof slab" was 31.07.2017 and therefore the due date for handing over of possession was 31.01.2021 (36 months from the date 31.07.2017 plus grace period of 6 months).

13. The complainant intend to continue with the project and is seeking delay possession charges interest on the amount paid. 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:

"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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this

behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

14. Payment of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the prescribed rate of interest. 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.

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter.

19. 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 of the considered view that there is no delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 02.12.2013. The respondent have obtained the Occupation Certificate from the concerned authorities on 11.07.2019 and offered possession of the unit to the complainant on 24.07.2019 i.e., before the due date of possession. Accordingly, there is no failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession as the respondent has offered possession of the unit to the complainant within the stipulated period.

20. 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/promoter is not established.
21. Further, the Authority observes that the complainant has failed to take possession of the unit till date. As per Section 19(10) of the Act, 2016, the allottee is obligated to take possession of the unit within two months of the Occupation certificate. The same is reiterated below:

Section 19

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be

(Emphasis supplied)

22. Thus, the complainant is hereby directed to pay the outstanding dues within a period of 30 days of this order alongwith the interest at the prescribed rate of interest @11.10% on the delayed payments and thereafter, the respondent is directed to handover possession of the unit to the complainant within a period of 30 days.

G.III Direct the respondent to pay Rs.1,00,000/- as compensation towards mental agony caused to the complainant.

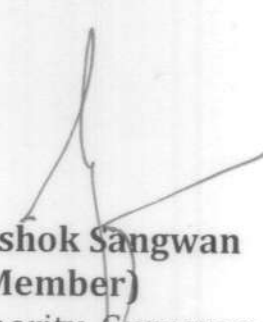
G.IV Direct the respondent to pay Rs.1,00,000/- towards the litigation expenses for the filing of the complaint.

23. 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.

H. Directions of the authority

24. 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 complainant is directed to pay the outstanding dues within a period of 30 days of this order alongwith the interest at the prescribed rate of interest @11.10% on the delayed payments and thereafter, the respondent is directed to handover possession of the unit to the complainant within a period of 30 days.
 - ii. The respondent is directed to execute Conveyance Deed in favour of the complainant within a period of two months after the outstanding dues and requisite payments are being made by the complainant.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
25. Complaint stands disposed of.
26. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.07.2025