

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

Complaint no.: 462 of 2024  
Order reserved on: 30.05.2025  
Order pronounced on: 24.07.2025

Shriniwas Sharma

**R/o:** - E-32, Phase-I, New Palam Vihar, Near St.  
Solider School, Gurugram, Haryana-122017

**Complainant**

Versus

M/s Shine Buildcon Private Limited

**Corporate office:** H-334, Ground Floor, New  
Rajender Nagar, New Delhi-1100060

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Garvit Gupta (Advocate)

Complainant

Shri Nishant Jain (Advocate)

Respondent

**ORDER**

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

**A. Unit and project-related details**

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

| S. No. | Particulars   | Details  |
|--------|---|--|
| 1.     | Name of the project                                     | "70 Grandwalk", Sector 70, Gurugram  |
| 2.     | Project area  | 2.893 acres  |
| 3.     | Nature of the project                                   | Commercial Complex   |
| 4.     | DTCP license no. and validity status                    | 34 of 2012 dated 15.04.2012 valid upto 14.04.2020  |
| 5.     | Name of licensee  | Shine Buildcon   |
| 6.     | RERA Registered/ not registered                         | 28 of 2017 dated 28.07.2017 valid up to 30.06.2022   |
| 7.     | Unit no.  | A-001, Ground floor<br>(page no.33 of complaint)   |
| 8.     | Unit area admeasuring                                   | 907 sq. ft. (Super Area)<br>(page no.34 of complaint)  |
| 9.     | Allotment Letter  | 04.03.2015<br>(Page no. 33 of complaint)   |
| 10.    | Letter for execution of buyer's agreement by respondent | 29.04.2015<br>(page 36 of complaint)   |
| 11.    | Date of execution of BBA                                | 11.05.2015<br>(Page no. 41 of complaint)   |
| 12.    | Building plan approval                                  | 03.05.2013<br>(taken from another complaint CR/5702/2023 of same project disposed off vide order dated 04.07.2024)   |
| 13.    | Payment Plan  | Construction linked plan<br>(page 86 of complaint)   |
| 14.    | Possession clause                                       | <b>Clause 13. POSSESSION AND HOLDING CHARGES</b><br><i>"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to</i> |

|     |                                |  |
|-----|--------------------------------|--|
|     |                                | <p><i>offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</i></p> <p>(Page no. 80 of complaint)</p> |
| 15. | Due date of possession         | <p>11.05.2019</p> <p>(Calculated to be 42 months from the date of execution of BBA being later + Grace period of 6 months being unqualified and unconditional)</p>   |
| 16. | Basic Sale Price               | <p>Rs.1,04,30,500 /-</p> <p>(As per BBA at page no. 87 of complaint)</p>   |
| 17. | Amount paid by the complainant | <p>Rs.1,07,65,315/-</p> <p>(As alleged by complainant page 10 of complaint and also during proceeding dated 30.05.2025, confirmed by the counsel for the complainant)</p>  |
| 18. | Occupation certificate         | <p>10.10.2023</p> <p>(Page 32 of reply)</p>  |
| 19. | Offer of possession            | <p>24.11.2023</p> <p>(Page 130 of complaint)</p>   |

#### B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:

- That the respondent offered for sale units in a commercial colony known as '70 Grandwalk' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 70, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 34 of 2012 on a land area in Village Badshahpur, Tehsil and District Gurgaon to its associates companies for development of a commercial colony in accordance with the

provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.

- b) That the complainant received a marketing call from the office of respondent in the month of July, 2014 for booking in commercial project namely, '70 Grandwalk', situated at Sector 70, Gurugram. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. He visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent also assured timely delivery of the unit.
- c) That the complainant, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project of the respondent as the complainant required the same in a time bound manner for their own use. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the commercial unit to be allotted to the complainant would be positively handed over within the agreed time frame. It was also assured by the respondent that if there was any delay on its part in handing over the possession of the commercial unit, then the respondent claiming to be a customer-oriented company would make upfront payment of interest as per the prevailing law.
- d) That the complainant had made a payment of Rs.5,00,000/- at the time of booking vide cheque no. 254551 dated 31.10.2014 and accordingly a receipt dated 04.11.2014 was issued by the respondent acknowledging the same. The respondent vide the said receipt allotted unit no. A-001, Ground floor measuring 907 sq. ft. in the said project. It was promised and assured by the respondent to the complainant that the agreement would be executed in a short span of time and the said unit would be handed over to the complainant timely.

- e) That the complainant after the said booking inquired about the status of the issuance of the allotment letter and execution of the agreement. However, no heed was paid to the inquiries made by the complainant. The respondent despite the efforts made by the complainant neither sent the allotment letter along with the payment plan nor executed the agreement with the complainant. The respondent on 30.11.2014 sent a call notice demanding payment of Rs.5,34,695/- which was duly paid by the complainant on time and accordingly a receipt dated 13.12.2014 was issued by the respondent acknowledging the said payment. Again on 19.12.2014, the respondent sent a call notice demanding net payable amount of Rs.12,10,710/-. The said payment demand was paid with by the complainant as the complainant made the said payment and accordingly the respondent issued receipts dated 08.01.2015 and 19.01.2015 to the complainant.
- f) That after several efforts and communications by the complainant and after the payment of a substantial sum towards the booking of the said unit, the respondent issued the allotment letter dated 04.03.2015 along with the payment plan vide which the respondent allotted shop no. A-001, situated at the ground floor having a super area of 907 sq. ft. The total sale consideration as per the payment plan was Rs.1,12,97,375/-.
- g) That the respondent on 12.03.2015 sent a demand letter against 'On Start of Excavation' vide which the respondent intimated the complainant that the construction of the said project of the respondent would be starting from 23.03.2015 which categorically meant that all the statutory approvals required for initiating construction of the project would have received by the respondent on or before 12.03.2015. The said payment was duly met by the complainant and there was no delay whatsoever on the part of the complainant.



- h) That the complainant has made a payment of Rs.36,22,887/- before the execution of the agreement. The complainant repeatedly requested the respondent for execution of an agreement towards the allotted unit. However, the respondent failed to pay any heed to the genuine request of the complainant and kept on dilly-dallying the matter on one pretext or the other. After a delay of more than 5 months from the date of booking and after several repeated reminders from the complainant, the respondent sent a letter dated 29.04.2015 towards the execution of buyer's agreement for the said unit.
- i) That the complainant expressed his objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. However, during such discussions, the respondent summarily rejected the bonafide request of the complainant and stated that the agreement terms were non-negotiable and would remain as they were. Since the complainant had duly paid a huge amount out of his hard-earned money, he felt trapped and had no other option but to sign on the dotted lines. Accordingly, the buyer's agreement was executed between the parties in dispute on 11.05.2015.
- j) That the complainant has till date made the payment of Rs.1,07,65,315/- out of the total sale consideration amount of Rs.1,12,97,375/- strictly as per the terms of the allotment and the time linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainant. The respondent used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainant without any delay, rather the complainant has paid more amount than the total sale consideration and there was never any delay caused by the complainant in making such payments.

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- k) That as per the clause 13 (ii) of the said buyer's agreement, the respondent was under an obligation to offer the possession of the said unit within a period of 42 months from the date of signing of the agreement or approval of the building plans, whichever is later. Since, the date of execution of the agreement was 11.05.2015, the due date for the delivery of the project was 11.05.2019.
- l) That vide payment demand dated 30.03.2017, the respondent demanded from the complainant net payable amount of Rs.29,21,843/-. The said payment demand was demanded against 'Completion of Structure'. The next payment demand as per the terms of the allotment and the construction linked payment plan which was to be raised was at the stage of 'offer of possession'. Since all the payment demands except the demand to be raised at the time of offer of possession were sent by the respondent to the complainant, then the respondent/promoter should have been in the condition even otherwise to apply for the grant of the occupation certificate in the year 2017 itself.
- m) That the respondent miserably failed to comply with the said due date as the same has been lapsed back in 2019. There was inordinate delay in developing the project well beyond what was promised and assured to the complainant. Since the time period to handover the possession stated by the respondent in the buyer's agreement was lapsed, he requested the respondent by telephonically, and by visiting the office of the respondent to update him about the date of handing over of the possession. The complainant even visited the construction sites 10-12 times during the whole dealing with the respondent. The respondent continuously misled the allottee(s) including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. The respondent/promoter had represented and warranted at the time of booking

that it would deliver the dream unit of the complainant to him in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant. The respondent misrepresented to the complainant that the possession would be handed over soon and the delayed interest would accordingly be adjusted.

- n) That finally, vide letter dated 24.11.2023, the respondent intimated to the complainant that the unit allotted to him was ready for possession as the respondent had obtained the occupation certificate. On-going through the terms of the offer of possession, the complainant realized that respondent had unilaterally increased the sale consideration of the unit by demanding illegal charges which were not attributable to the complainant.
- o) That the offer of possession contained several illegalities which are as follows:

**I- Interest demanded from the complainant**

That the respondent vide the said offer of possession demanded Rs.2,91,843/- towards the interest. There was no delay at all on the part of the complainant in making the payment towards the total sale consideration amount. Even otherwise, as already stated, the said amount has been charged by the respondent at the rate of 20% on the basis of unilateral terms of the agreement. The complainant is not bound to make such a payment more so when the respondent failed to adhere to its contractual obligations. No such amount of Rs.2,91,843/- is due and payable by the complainant to the respondent. Rather, the respondent is legally bound to make the payment of delayed payment charges to the complainant as per provisions laid down by law.

**II- Unilateral increase in the Basic Sale price**

That as per the rate schedule at attached with the agreement, the net basic sale price of the unit was Rs.99,77,000/-. However, as per the said offer of



possession, the basic sale price of the unit has been increased to Rs.1,04,98,525/- (basic sale price plus additional basic charge). No explanation has been given to the complainant by the respondent regarding the said increase in the price. The complainant is not bound to make such additional payment and the offer of possession is invalid and void to such an extent.

### **III- Unilateral Increase in the Club charges**

That as per the rate schedule at attached with the agreement, the amount against club charges was Rs.50,000/-. However, the same have been unilaterally increased to Rs.2,50,000/-. The complainant was coerced to make payment of Rs.1,87,500/- as on date. The respondent is liable to withdraw the said demand and refund the excess Rs.1,37,000/- paid by the complainant to the respondent along with interest.

### **IV- Unilateral Increase in the Car Parking charges**

That as per the rate schedule at attached with the agreement, the amount against car parking charges was Rs.2,50,000/-. However, the same have been unilaterally increased to Rs.4,98,850/-. The complainant was coerced to make the entire payment of Rs.4,98,850/- as on date. The respondent is liable to refund the excess Rs.2,48,850/- paid by the complainant to the respondent along with interest.

- p) That the complainant challenged the imposition of several illegal charges that were demanded by respondent under the garb of a 'legal' offer of possession. The complainant made vocal his objections and sought clarifications from respondent vide email dated 20.01.2024. The complainant vide the said email also requested the respondent not to create any third party rights by any means or to charge interest/holding charges from the date of issuance of the offer of possession as the same itself is invalid

and void. However, the respondent has neither revoked the illegal demands nor handed over the possession to the complainant.

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

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

- i. Direct the respondent pay delay possession charges.
- ii. Direct the respondent to handover the possession.
- iii. Direct the respondent to hold offer of possession 24.11.2023 being illegal consisting of unlawful demands.
- iv. Direct the respondent to immediately revoke the illegal demands forming part of the offer of possession and issue a new and valid offer of possession
- v. Direct the respondent to execute conveyance deed
- vi. Direct the respondent to refund the excess amount of Rs.1,37,000/- towards club charges and excess amount of Rs.2,48,850/- towards car parking charges.
- vii. Direct the respondent not to charge anything not a part of agreement.
- viii. Direct the respondent not to charge holding charges on the incorrect and illegal demand raised by it.
- ix. Pass an order imposing penalty on account of various defaults and illegalities under RERA Act, 2016.
- x. Since the offer of possession itself has been challenged by the complainant is not liable to pay any interest on the wrong amount calculated by the respondent.

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

**D. Reply by the respondent.**

6. The respondent contested the complaint on the following grounds:

- a) That the present complaint is not maintainable as the complainant has booked the shop in question and buyer's agreement dated 11.05.2015 was executed between the parties before coming into force of the relevant provision of the Act, 2016 and the Rules, 2017. These legal provisions have been authoritatively held to be prospective in operation and these do not apply retrospectively before coming into force w.e.f. 01.05.2017. Hence no

interest can be imposed upon the respondent under the provisions of Sections 12, 18 or 19 of the Act as the parties are bound by the terms and conditions agreed and contained in the buyer's agreement dated 11.05.2015 which was executed prior to coming into force of Sections 3-19 of the RERA Act/Rules. Even in the matter titled as "**Neelkamal Realtors Suburban Pvt. Ltd. & Others Vs Union of India & Others**" {MANU/MH/3135/2017-**Equivalent Citation: 2018(1)ABR558, 2018(1)RCR(Civil)298**} it has been held that the RERA Act is not applicable retrospectively. Hence the Authority has no jurisdiction to modify the terms and conditions of buyer's agreement dated 11.05.2015. This Authority has no power to re-write the contract between the parties.

- b) That the complainant has no right to claim more than the amount for delayed possession as agreed between the parties as per clause 13 (ii) of the buyer's agreement dated 11.05.2015. As per clause 13 (ii) of the buyer's agreement, the complainant is entitled for compensation for delayed period, if any, @ Rs.5/- per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the shop to the complainant which was subject to force majeure. The occupation certificate bearing Memo No. ZP-819/JD(RA)/2023/33687 dated 10.10.2023 has been issued to the respondent by the competent authority. The respondent has already offered possession of the shop to the complainant vide letter dated 24.11.2023. Further, the total cost of the unit including taxes is Rs.1,32,18,742/- out of which the complainant has only paid an amount of Rs.93,31,593/- and Rs.38,04,689/- is still outstanding against the complainant. The respondent has already offered possession to the complainant.
- c) That the respondent has already obtained the occupation certificate for the unit of the complainant. The complainant is under contractual obligation to

clear their outstanding dues along with interest from the date of offer of possession, i.e. 24.11.2024 till actual payment is made by the complainant. The complainant is liable to take possession from the respondent after making the due payments.

- d) That after being fully satisfied with specification and veracity of the project, the complainant applied for booking of commercial unit vide application form dated 04.11.2014. However, the complainant was aware of every term of the application form and decided to sign upon the same after being fully satisfied, without any protest or demur. The respondent vide allotment letter dated 04.03.2015 was allotted a unit bearing no. A-001 at Ground Floor admeasuring super area of 907 sq. ft. (84.26 sq. mtr.) approximately, in the aforesaid project.
- e) That as per clause 13(iv) of buyer's agreement, the parties agreed that in case the completion of the said shop is delayed due to 'Force Majeure', then the commitment period, and/or grace period and/or extended delay period, as the case may be shall be extended automatically to the extent of the delay. As the development of the project was affected due to the Covid-19, and accordingly the respondent is entitled for a further extension of 6 months in due date of possession. It may also be noted that the date of offering possession was to be calculated from the date of signing of the buyer's agreement and the respondent herein was entitled for extension for such period of delay caused due to force majeure being purely beyond the control of the respondent.
- f) That it is an evident fact that since starting the respondent was committed to complete the construction of the project within the proposed timeline and till date had invested an amount approx. Rs.1,20,00,00,000/- towards completion of the project including both the land cost and construction related costs/expenditures. The respondent under bonafide had already paid



EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottee(s) of the project was only approximate Rs.45,00,00,000/-. The respondent has already spent more amount than collected from the allottee(s) in completion of the project and even obtained occupation certificate from the concerned department which apparently proves that there was never any mala fide on the part of the respondent and there is no intentional delay in completion of the project. The respondent is not liable to pay any delayed charges to the complainant.

- g) That in accordance with the provisions of the Act, 2016 the respondent had even applied for registration of the said project with the Authority vide application dated 20.07.2017 and upon receiving the said application the Authority had granted registration to the respondent for the project in question vide registration no. 28 of 2017 dated 28.07.2017 which was duly intimated to the complainant vide email dated 05.08.2017.
- h) That the respondent was committed to complete the development of the project and handover the possession within the proposed timelines. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- i) That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. That such delay was not intentional. The respondent was bound to adhere with the order and notifications of the Courts and the Government. The details of the ban on construction activities vide various directions of the National Green Tribunals or the Statutory Authorities etc. are highlighted in the table below:



| Sr. No | COURTS, AUTHORITIES ETC. / DATE OF ORDER  | TITLE  | DURATION OF BAN  |
|--------|---|--|--|
| 1.     | National Green Tribunal /08.11.2016 & 10.11.2016  | Vardhman Kaushik Vs. Union of India                        | 08.11.2016 – 16.11.2016 (8 days)                                   |
| 2.     | National Green Tribunal /09.11.2017   | Vardhman Kaushik Vs. Union of India                        | 09.11.2017 – Ban was lifted after 10 days (10 days)                |
| 3.     | National Green Tribunal /18.12.2017   | Vardhman Kaushik Vs. Union of India                        | 18.12.2017 – 08.01.2018 (22 days)                                  |
| 4.     | Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018 | Order/Notification dated 14.06.2018                        | 14.06.2018 – 17.06.2018 (3 days)                                   |
| 5.     | Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA          | Press Note – 29.10.2018 and later extended till 12.11.2018 | 01.11.2018-12.11.2018 (11 days)                                    |
| 6.     | Hon'ble Supreme Court/ 23.12.2018   | 3 days Construction ban in Delhi/NCR                       | 24.12.2018 – 26.12.2018 (3 days)                                   |
| 7.     | Central Pollution Control Board   |  | 26.10.2019 – 30.10.2019 (5 days)                                   |
| 8.     | Environment Pollution (Prevention & Control Authority)-EPCA- Dr.BhureLal, Chairman                          | Complete Ban   | 01.11.2019 – 05.11.2019 (5 days)                                   |
| 9.     | Supreme Court – 04.11.2019  | M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985         | 04.11.2019 – 14.02.2020 (3 months 11 days)                         |
| 10.    | Ministry of Housing & Urban Affairs, Government of India – Covid-19 Lockdown 2020                           | Notification dated 28.05.2020                              | Complete 9 months extension with effect from 25.03.2020 (9 months) |
| 11.    | Covid-19 Lockdown 2021  |  | 8 weeks  |
| TOTAL  |   |  | 1.4 years (approx.)  |

- j) That the delay caused due to unforeseen circumstances, shall be calculated, before the determination of the date to offer possession to the complainant. As per the calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently, in June, 2021, removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.

- k) That all these factors being force majeure may be taken into consideration for the calculation of the period of the construction of the project. The respondent had carried out its obligations in agreement with utmost diligence. As can be seen from above paras, the respondent without any binding obligation, on its own sense of duty, through various letters, has updated the complainant about the status of the project with attached pictures for the same. That while computing the date to offer possession the grace period as agreed by the complainant under clause 13 shall also be considered. Thus, as per the agreement, excluding the force majeure situations, the date to offer possession shall be 11.05.2019, after addition of the grace period as agreed by the complainant under clause 13(ii) of the agreement.
- l) That on 08.08.2022, after continuous efforts of respondent towards the completion of the project, the respondent informed the complainant that the mechanical, electrical, plumbing and other related services along with finishing work, tremix work and surface preparation in retail shops will be completed within 2-3 months. The respondent also stated that offer of possession will be provided within next 3-4 months and soon the complainant will be receiving the call letter for remittance of payment for the last instalment. The respondent also attached photographs showing the progress in the construction of the project. Despite, after facing various hindrances in mid-way of the construction of the project the respondent herein has managed to complete the construction of the project. The construction of the project wherein the unit/shop of the complainant is situated has been completed and the respondent has already obtained occupation certificate on 10.10.2023.
- m) That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and

has mislead the Authority, for the reasons stated above. None of the reliefs as prayed for by the complainant are sustainable before the Authority and in the interest of justice. Hence, the present complaint under reply is liable to be dismissed with cost.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

**E. 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.

**E.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 the entire Gurugram District for all purposes 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.I Objections regarding force majeure.**

12. The respondent-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court and COVID-19. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent/builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the respondent/promoter cannot be given any leniency on the basis of aforesaid reasons.
13. The respondent/promoter further alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, orders of the Hon'ble NGT prohibiting construction in and around Delhi, various other court orders and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 11.05.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 11.05.2019. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the respondent/promoter cannot be



granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

14. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020* has observed that:

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

15. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 11.05.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

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

**G.I Direct the respondent pay delay possession charges.**

**G.II Direct the respondent to hold offer of possession 24.11.2023 being illegal consisting of unlawful demands.**

16. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of 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, —**

.....

12



*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."*

17. Clause 13(ii) of the apartment buyer agreement provides for handing over of possession and is reproduced below:

*"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."*

18. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the subject unit within a period of 42 months from the date of signing of this agreement or approval of the building plans, whichever is later and further additionally be entitled to a period of 6 months as Grace period. In the present matter, the date of building plan approved on 03.05.2013, and the buyer's agreement was executed inter se parties on 11.05.2015. Thus, the 42 is calculated from the date of execution of buyer's agreement being later i.e., 11.05.2015 comes out to 11.11.2018. Further, grace period of 6 months is allowed to the respondent being unqualified and unconditional for the force majeure. Thus, the due date of handing over possession comes out to be 11.05.2019.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. 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, *ibid*. 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]***

*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."*

20. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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.
21. 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., **24.07.2025** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant Section is reproduced below:

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

***Explanation. — For the purpose of this clause —***

*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 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;"*

23. 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 to them in case of delayed possession charges.

24. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (11.05.2015) or date of approvals of building plans (03.05.2013), whichever is later. Therefore, the due date of handing over possession comes out to be 11.05.2019 (including the grace period of six months) calculated from the date of execution of buyer's agreement being later. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject unit was offered to the complainant on 24.11.2023. Copies of the same have been placed on record.
25. The complainant herein has raised contention that letter of offer of possession given by the respondent is not a valid offer of possession. As offer of possession is issued with several additional demands which are not the part of the builder buyer's agreement, etc. The said offer of possession is valid as the possession has been offered after receiving occupation certificate from the competent authority. As per Section 19(10) of Act of 2016, the allottee(s) are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The Authority is of the view that if the additional demands are made by the developer, the allottee(s) may accept possession under protest or decline to take possession raising objection against unjustified demands. However, no objection has been raised by the complainant at the time of offer of possession.
26. The Authority is of the considered view that there is delay on part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's

agreement dated 11.05.2015 to hand over the possession within the stipulated period.

27. Section 19(10) of the Act obligates the allottee(s) 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 10.10.2023. The respondent offered the possession of the unit in question to the complainant only on 24.11.2023, 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 complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have 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, i.e., 11.05.2019 till the expiry of 2 months from the date of offer of possession (24.11.2023) which comes out to be 24.01.2024.

**G.III Direct the respondent to handover the possession.**

28. The respondent has obtained the occupation certificate from the competent authority on 10.10.2023 and offered the possession of the allotted unit vide letter dated 24.11.2023. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties. The complainant is directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 30 days of this order.





**G.IV Direct the respondent to execute conveyance deed.**

29. The complainant is seeking relief of execution of conveyance deed. As per clause 14 of the buyer's agreement provides for 'Conveyance deed and stamp duty' and is reproduced below:

**"14. CONVEYANCE DEED AND STAMP DUTY**

*Subject to the Allottee, fulfilling all its responsibilities stipulated herein and executing any other document as required to be executed pursuant to this Agreement and making all payments under this Agreement, including but not limited to:*

- (i) All payments as set forth in **ANNEXURE III** to this Agreement, including the Sale Consideration of the said Shop;*
  - (ii) Interest on delayed instalments;*
  - (iii) Registration charges;*
  - (iv) Stamp duty;*
  - (v) Any other incidental charges or dues, required to be paid for due execution and registration of the Conveyance Deed;*
  - (vi) Holding Charges and/or any other charges, dues payable by the Allottee to the MSA/Company till the date of execution of the Conveyance Deed;*
  - (vii) All other dues, as set forth in this Agreement or as may become due to the Company from time to time with respect to the said Shop;*
- The Company shall prepare and execute Conveyance Deed to convey the title of the said Shop in favour of the Allottee."*

30. The Authority has gone through the conveyance clause of the agreement. A reference to the provisions of section 17 (1) of the Act is also must and it provides as under:

**"Section 17: - Transfer of title**

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

31. The respondent is under an obligation as per Section 17 of Act to get the conveyance deed executed in favour of the complainant. Also, as per section



19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As delineated hereinabove, the occupation certificate in respect of the said project/unit was granted on 10.10.2023 by the competent authority. Thus, the respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act, 2016.

**G.V Direct the respondent not to charge anything not a part of agreement.**

**G.VI Direct the respondent not to charge holding charges and maintenance charges till actual handover.**

**G.VII. Direct the respondent not to charge EEC/EFC, charges and power backup charges.**

32. The above-mentioned reliefs sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other relief.

33. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

• **Maintenance Charges**

34. This issue has already been dealt with by the Authority in complaint bearing no. 4031 of 2019 titled as *"Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021*, wherein it was held that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

• **EEC/EFC Charges and power backup charges:-**

35. As far as external electrification charges are concerned, the respondent/promoter is entitled to recover the charges only in terms of the builder buyer agreement executed inter se parties. As per offer of possession dated 24.11.2023, the respondent has charged EEC/EFC and the same are payable under clause 21(ii) of the Agreement which states that:

*"Adequate firefighting equipment as per law will be installed by the Company in the 70 Grandwalk project and any increase in the cost by way of additional equipment deemed necessary by the Company or MSA shall be paid on demand by the Allottee in proportion to the Super Area of the said Shop to the super area of all the Buildings in the 70 Grandwalk project."*

36. In view of the aforesaid clause, the respondent is entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electrification, i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head.

**G.VIII. Direct the respondent to pay litigation cost of Rs.1,00,000/-.**

37. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled **as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**H. Directions issued by the Authority:**

38. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 11.05.2019 till valid offer of possession (24.11.2023) plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) 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 allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days. The respondent is directed to handover the physical possession of the unit within 30 days to the complainant/allottee. The respondent is further directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim

holding charges from the complainant/allottee at any point of time even after being part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

39. Complaint as well as applications, if any, stand disposed off accordingly.
40. File be consigned to the registry.

Dated: 24.07.2025



  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
GURUGRAM