



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1313 of 2023
Date of filing:	08.06.2023
First date of hearing:	11.07.2023
Date of decision:	04.08.2025

1. Anjali Kapoor
W/o Sh. Sanjay Kapoor
R/o 7/60, South Patel Nagar,
New Delhi-110008

2. Sh. Sanjay Kapoor alias Sanjay Kumar
R/o 7/60, South Patel Nagar,
New Delhi-110008

.....COMPLAINANTS

Versus

RPS Infrastructure Ltd.
through its Managing Director,
Registered office- 1117-1120, 11th floor
Tower B, DLF Towers,
Jasola District Center,
New Delhi-110025

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Mr. Harprit Singh Arora, Advocate, Counsel for the complainants through VC

Adv. Garvit Gupta, counsel for the respondent through VC.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 08.06.2023 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made there under, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No	Particulars	Details
1.	Name & location of project	"RPS Auria" at Sector-88, Faridabad, Haryana.
2.	RERA registered/not registered	Registration No. HRERA-PKL-FBD-200 of 2017)
3	Unit no.	T-6-206
4.	Super built up area	1565 sq. ft.



5.	Date of Allotment	13.06.2014
6.	Builder buyer agreement	12.06.2014
7.	Deemed date of possession	12.06.2018
8.	Basic Sale Price and Total Sale Consideration of the unit	₹57,46,680/- (Basic Sale Price) ₹76,93,350/- (Total Sale Consideration)
9.	Amount paid by complainants	₹52,74,956/-
10.	Occupation Certificate received by the respondent	25.01.2023
11.	Offer of possession	13.02.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the Complainants in search of a suitable residential dwelling, were induced by the Respondent through its marketing agents to invest in the Respondent's project titled "RPS Auria" situated in Sector-88, Faridabad, Haryana. The Complainants were made to believe that the Respondent was a reputed developer committed to timely delivery of possession as per the agreed terms and conditions. Acting upon such representations and inducements, the Complainants were allured into booking a residential unit in the said project. A copy of the Booking Form is annexed as Annexure C-1.
4. That in April 2013, the Complainants applied for the allotment of a 3 BHK residential unit bearing No. 0206, situated on the 2nd Floor of Tower T-6,



admeasuring 1565 sq. ft., in the project "RPS Auria", for a total sale consideration of ₹76,93,350/-.

5. That the Complainants made payments towards the said application through cheques, which were duly acknowledged by the Respondent through receipts. Subsequently, the booking was confirmed and an Allotment Letter dated 13.06.2014 was issued in favour of the Complainants. Copies of the Receipts and the Allotment Letter are annexed as Annexures C-2 and C-3, respectively.
6. That pursuant to the allotment, the Complainants regularly made payments in response to various demand letters issued by the Respondent, without default. A Builder Buyer Agreement (BBA) was executed on 13.06.2014, a copy whereof is annexed as Annexure C-4. However, the Respondent failed to maintain the promised pace of construction, and despite the delay, kept raising fresh demands. The Complainants, relying on the Respondent's assurances, continued to make timely payments, even though such payments are contractually and statutorily reciprocal to the pace of construction.
7. That the Complainants consistently followed up with the Respondent regarding the progress of construction and sought updates on the expected date of possession. In response, the Respondent repeatedly gave false assurances and motivated the Complainants to believe that possession would be handed over in a timely manner.



8. That without completing the construction in accordance with the promised schedule and in contravention of the statutory provisions of the Real Estate (Regulation and Development) Act, 2016, the Respondent continued to issue demand letters for payment of the balance consideration. That the project being “ongoing” was registered under RERA. Despite this, the Respondent failed to adhere to the construction timeline. The Complainants, therefore, requested payment of interest for the inordinate delay, which is their statutory right under Section 18(1) of the Act.
9. That as per Clause 22 of the BBA, the Respondent was obligated to deliver possession within a period of 48 months, including a grace period, from the date of execution of the Agreement, i.e., by January 2018. However, despite repeated follow-ups and requests, the possession was not delivered within the stipulated timeline. The Complainants are now left with no option but to approach this Hon’ble Authority, as their hard-earned money has been misused and they are victims of the Respondent’s false assurances and misleading conduct.
10. That the Respondent has now belatedly issued an Offer of Possession dated 13.02.2023, thereby delaying the project by more than five years. However, no adjustment or payment of delay interest has been made by the Respondent,

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despite the Complainants' repeated requests. A copy of the Offer of Possession is annexed herewith as Annexure C-5.

11. Further, Complainants have filed rejoinder dated 23.07.2024. Further, an application dated 04.07.2025 has been filed by the complainants wherein they have calculated the amount accrued on account of delay in handing over of possession of the unit in the registry in support of their pleadings. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

C. RELIEF SOUGHT

12. In view of the facts mentioned in the captioned complaint, the complainants pray for following:
- i. Direct the Respondent to pay delay interest on amount paid or penalty at the rate of MCLR +2%, as per RERA norms, with effect from the date of possession as per the Builder Buyer Agreement till the actual date of possession, and waiver of illegal charges.
 - ii. Interest for every month of delay at prevailing rate of interest; and waiver of illegal charges, imposed.
 - iii. Compensation for mental harassment; costs of litigation; and any other relief, which this Hon'ble Court may deem fit and proper, may also be granted, in the interest of justice, equity, and fair-play.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. Respondent has submitted a detailed reply on 12.02.2024 in the registry of the Authority, pleading therein as under:-

14. The respondent submits that the present complaint is not maintainable and is liable to be dismissed on following grounds:

- i. The present complaint is not maintainable before this Hon'ble Authority in view of the existence of an **Arbitration Agreement** between the parties under Clause 64 of the Apartment Buyer's Agreement. As per Section 8 of the Arbitration and Conciliation Act, 1996, the parties are bound to resolve their disputes through arbitration. Therefore, the Complainants ought to have invoked the arbitration clause before approaching this Authority.
- ii. The Complainants have not approached this Hon'ble Authority with clean hands and **have suppressed material facts** such as defaults in timely payment of instalments as per the payment schedule. It is a settled principle of law that any litigant approaching a quasi-judicial authority while concealing material facts is not entitled to any relief, and such complaint is liable to be dismissed at the threshold.
- iii. The present complaint is **premature and misconceived**, as the Respondent has already completed the construction of the subject Unit,



obtained the Occupation Certificate on 25.01.2023. Thereafter, respondent issued a valid Offer of Possession on 13.02.2023, followed by multiple reminders. The Complainants have failed to come forward to take possession despite repeated communications. Hence, no cause of action survives in the present matter and the complaint deserves to be dismissed with exemplary costs.

15. The Respondent is a duly incorporated company under the Companies Act, 1956 on 15.09.2005, having its registered office at 1117-1120, Tower-B, DLF Towers, Jasola District Centre, New Delhi – 110025. The Board of Directors vide Resolution dated 12.11.2018 authorized Mr. Rajesh Jain to represent the Company in all legal proceedings. Copies of the Certificate of Incorporation dated 15.09.2005 and the Board Resolution dated 12.11.2018 are annexed as Annexure R-1 and Annexure R-2 respectively.
16. The Complainants applied for a 3 BHK residential unit in the project “RPS Auria” at Sector-88, Faridabad. An Application Form dated 21.04.2014 was duly submitted, followed by the execution of a Builder Buyer Agreement (BBA) dated 12.06.2014 and issuance of Allotment Letter dated 13.06.2014 for Unit No. 0206, Tower T-06, measuring 1565 sq. ft. Application Form, BBA and Allotment Letter are annexed as Annexure R-3, R-4 and R-5 respectively.



17. The subject project including Tower T-06 was registered under HRERA vide RERA Registration Certificate No. 200 of 2017 dated 15.09.2017, wherein the revised date of completion was declared as 14.09.2021. As per Clause 22 of the BBA, the tentative completion date was 13.06.2018 (i.e., 48 months from BBA execution), subject to sanctions and fulfilment of payment obligations. A copy of the RERA Registration Certificate is annexed as Annexure R-6.
18. That owing to Covid-19 and other unforeseen events, the construction timeline was extended:
 - a. First by 9 months vide HRERA Advisories dated 26.05.2020 and 09.08.2021
 - b. Then by one year vide HRERA Resolution dated 04.07.2022, issued under dispatch No. 1695 dated 15.07.2022. Said advisories and resolution are annexed as Annexure R-7 (Colly) and Annexure R-8 respectively.
19. The Respondent completed construction of the unit in March 2022 and applied for the Occupation Certificate on 05.04.2022, which was issued by DGTCP on 25.01.2023. Application for OC and the Occupation Certificate are annexed as Annexure R-9 and Annexure R-10 respectively.
20. The Respondent issued a valid Offer of Possession dated 13.02.2023, followed by reminders dated 21.04.2023, 24.08.2023, 22.09.2023 and 02.11.2023, but



the Complainants failed to respond or take possession. Offer of Possession and subsequent reminders are annexed as Annexure R-14 and Annexure R-15 (Colly) respectively.

21. The project was launched over the land measuring 30.268 acres, licensed under Licence No. 124 of 2008 granted by the Director, Town & Country Planning, Haryana. A partial transfer of licence for 16.925 acres was granted in favour of the Respondent on 20.03.2014. Licence and Transfer of Part Licence are annexed as Annexure R-11 and Annexure R-12 respectively.
22. Despite opting for a construction-linked payment plan, the Complainants delayed payments on multiple occasions. Out of various demand notices raised, payments were delayed for seven demand notices including those dated 13.07.2013, 07.03.2014, 09.03.2015, 08.05.2015, 14.07.2015, etc. Demand Notices and reminders are annexed as Annexure R-13 (Colly).
23. Despite multiple construction bans imposed by NGT and the Hon'ble Supreme Court, and the Covid-19 pandemic, the project was completed well before the extended RERA deadline of 14.06.2023 and possession was duly offered.
24. As per Clause 29 of the BBA, if any compensation is payable for delay (not attributable to force majeure), the same is adjustable at the time of execution of the conveyance deed. Since the Complainants have not come forward to take possession or execute the deed, no adjustment has been made yet.



However, Respondent does not deny liability under this clause if conditions are fulfilled. Further, Clause 29 also bars compensation if the allottee delayed in making payments.

25. Respondent has filed an application dated 16.05.2024 for submission of the Vakalatnama of the counsel representing the Respondent, an application dated 30.05.2024, wherein the Respondent has annexed proof evidencing that the cost imposed during the earlier hearing of the complaints have been duly paid by the Respondent and an application dated 18.04.2025, wherein the Respondent has annexed a detailed calculation sheet showing the delay caused by the Complainants in making payments towards the unit in question, in support of the Respondent's pleading. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANTS

26. Ld. counsels for both the parties submitted that the detailed arguments were heard and recorded in last order dated 07.07.2025 passed by the Authority.

F. ISSUE FOR ADJUDICATION

27. Whether the complainants are entitled to get possession of the booked unit along with delay interest in terms of Section 18 of RERA, Act of 2016?



G. OBSERVATIONS AND DECISION OF THE AUTHORITY

28. The Authority has gone through the documents placed on record. It is an undisputed fact that complainants booked a unit bearing no. 0206, on 2nd floor, at Tower "T-6", admeasuring 1565 sq. Ft. in the real estate project "RPS Auria" located at Sector-88, Faridabad, Haryana, being developed by promoter, "RPS Infrastructure Ltd.", for total sale consideration of ₹76,93,350/- vide allotment letter dated 13.06.2014. Apartment Buyer Agreement was executed between the parties on 12.06.2014. Complainants have paid an amount of ₹52,74,956/- qua unit in question. Further, respondent has received occupation certificate from the Department of Town and Country Planning on 25.01.2023. Subsequently, an offer of possession was made to the complainants on 13.02.2023.
29. As per Clause 22 of the Apartment Buyer Agreement, the Respondent was under an obligation to complete the construction of the said unit "*within 48 months from the date of execution of this agreement or from the date of obtaining requisite sanctions from the concerned Authority or from the date of commencement of construction of the project, whichever is later.*" However, perusal of the records reveals that the Respondent has failed to specify any definitive date as to when the requisite sanctions were obtained from the concerned Authority or when the construction of the project actually



commenced. In the absence of such information, the Authority deems it appropriate to compute the deemed date of possession as 48 months from the date of execution of the agreement, which in this case comes out to be 12.06.2018 (i.e., 48 months from 12.06.2014).

30. Respondent has challenged the maintainability of the complaint on following grounds:

- i. *The present complaint is not maintainable before this Hon'ble Authority in view of the existence of an Arbitration Agreement between the parties under Clause 64 of the Apartment Buyer's Agreement.*

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA 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 RERA 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 on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and 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.

Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.*, Consumer case no. 701 of 2015 decided on 13.07.2017, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

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

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

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



between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act
.....

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

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, 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. As provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgment passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation



in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in *Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717* examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held "*there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."*

Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within their right to seek a special remedy available in a beneficial Act such as the



Consumer Protection Act and Real Estate (Regulation and Development) 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 required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the said objection of the respondent stands rejected.

- ii. *The present complaint is premature and misconceived, as the Respondent has already completed the construction of the subject Unit, obtained the Occupation Certificate on 25.01.2023, and issued a valid Offer of Possession on 13.02.2023, followed by multiple reminders.*

With regard to the same, the Authority observes that the Respondent was under an obligation to complete the construction of the unit and offer possession by 12.06.2018, being 48 months from the date of execution of the Apartment Buyer Agreement, i.e., 12.06.2014. While it is noted that the Respondent has eventually completed the construction, obtained the Occupation Certificate on 25.01.2023, and issued the Offer of Possession on 13.02.2023 followed by multiple reminders, this does not absolve them of the delay. The Offer of Possession was admittedly made nearly five years beyond the stipulated date, reflecting an inordinate and unexplained delay in fulfilling contractual obligations. The Authority is of the view that such delay not only breaches the contractual terms agreed upon between the parties, but also frustrates the very object and purpose of the Real Estate (Regulation and Development) Act,



2016, which aims to ensure timely delivery of possession and protect the interest of homebuyers. Therefore, in view of facts and circumstances, the Authority is of the considered opinion that the Complainants are well within their rights under the RERA Act, 2016 to approach this Authority and seek appropriate relief for the said delay.

iii. That owing to Covid-19 and other unforeseen events, the construction timeline was extended.

The obligation to deliver possession within the period stipulated in the apartment Buyer Agreement, i.e., 48 months from the date of execution of apartment buyer agreement, is not fulfilled by respondent. The Authority observes that there has been a delay on the part of the respondent in completing the project and handing over possession of the unit to the complainants. The various reasons cited by the respondent, first by 9 months vide HRERA Advisories dated 26.05.2020 and 09.08.2021, then by one year vide HRERA Resolution dated 04.07.2022, issued under dispatch No. 1695 dated 15.07.2022 mentioned by the respondent are not deemed convincing as all these incidents happen to occur after the deemed date of possession. The deemed date of possession as per the agreement was in the year 2018, which precedes the above said incidents. Thus, this contention of the respondent does not qualify for consideration under the force majeure clause, as these circumstances occurred after the contractual due date for possession. Therefore



the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

31. Another issue that requires adjudication by the Authority is whether the offer of possession made by the Respondent on 13.02.2023 and demands made by respondent is legally valid or not?

The Authority observes that, under the Real Estate (Regulation and Development) Act, 2016, a valid offer of possession must be accompanied by the issuance of the Occupation Certificate from the competent authority. In the present complaint, the Respondent has submitted that Occupation Certificate has been obtained by the respondent on 25.01.2023. The Complainants have neither disputed the date of receipt of the Occupation Certificate nor raised any objection in this regard. Accordingly, the Authority finds it appropriate to conclude that the offer of possession made by the Respondent on 13.02.2023 is legally valid, as it was supported by the Occupation Certificate dated 25.01.2023.

Further, the Authority observes that the offer of possession dated 13.02.2023 refers to Annexure-A, outlining the procedural requirements for handing over of physical possession of the unit, and Annexure-B, which provides a detailed

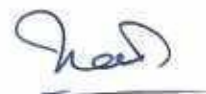


break-up of the outstanding dues payable by the Complainants. The said annexure includes itemised calculations under various heads, including basic sale price, car parking allocation charges, preferential location charges, Development Charges, Club membership charges, Interest free Maintenance Security(IFMS), EEC & FFC, Power backing installation charges, Meter connection charges, Electricity Consumption security-4KW, labour fees @ Rs. 20/- psf, Prepaid Meter card deposit (Advance deposit against the common area maintenance), VAT, interest on delayed payments and Administration charges. It is also noted that the offer of possession clearly stated that the formalities for handing over possession shall be initiated only upon clearance of all pending dues. The Complainants, in Relief No. 2, have sought waiver of the above-mentioned charges, terming them as illegal. However, upon careful perusal of the Apartment Buyer Agreement dated 12.06.2014, which bears the signatures of the Complainants on every page, the Authority finds that the Complainants have contractually agreed to the imposition of these charges. The relevant clauses of the agreement including but not limited to Clauses 3, 4, 5, 6, 7, 9, 10, 33, and 44, inter alia—clearly stipulate the liability of the allottees to bear these heads of payment. Accordingly, the Authority finds no illegality in the charges raised by the Respondent in the demand letter accompanying the offer of possession. In view of the same, the Authority



directs the Complainants to clear the outstanding dues, as per the terms and conditions agreed upon in the Apartment Buyer Agreement, so as to enable the Respondent to proceed with the formal handing over of the booked residential unit.

32. The Respondent has also submitted an application dated 18.04.2025, wherein a detailed table has been annexed, showing the stage-wise progress of construction, the dates on which demand notices were issued by the Respondent, the amounts demanded at each stage, the due dates for payment, the actual dates of payment made by the Complainants, and the corresponding delay in each instance. Upon careful perusal of the said table, the Authority observes that although the deemed date of possession in the present matter is 12.06.2018, the Complainants have consistently delayed payments at several key stages. For instance, at Serial No. 10 of the table, it is recorded that the demand corresponding to the completion of the tenth-floor roof slab casting was raised by the Respondent on 14.07.2015, with due date of payment as 29.07.2015, whereas the payment was made by the Complainants only on 14.07.2016, indicating a delay of 351 days, i.e., almost one year. Similar patterns of delay are observed across various other milestones in the construction-linked payment schedule. The Complainants had opted for a Construction-Linked Payment Plan, whereby payments were contractually



required to be made in proportion to the completion of specified stages of construction. The timely release of funds by the allottee is vital for ensuring continuous progress in the project. Persistent delays in payments can severely affect the construction schedule and consequently, the delivery of possession. The Respondent has also annexed various demand notices and reminder communications issued prior to the deemed date of possession. However, the Complainants neither raised any objections to the data presented nor submitted any reasonable justification for the delay in making timely payments. In this regard, Authority refers to Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, which mandates that an allottee shall be responsible for making payments as per the terms of the agreement for sale. Further, Section 19(7) provides that in case of default, the allottee shall be liable to pay interest at the prescribed rate for the period of delay. Therefore, the Complainants, having delayed payments as recorded, is also liable to pay interest in accordance with the provisions of the Act. It is, however, observed that the interest calculation submitted by the Respondent has been done at the rate of 11.10%. As per Act and Rules, framed thereunder, the prescribed interest rate under RERA is linked to the State Bank of India's Marginal Cost of Lending Rate (MCLR) + 2%. The MCLR as of 04.08.2025 stands at 8.90%, and accordingly, the applicable interest rate for delayed payments should be



10.90% (8.90% + 2%). Therefore, the Respondent is directed to recalculate the interest for delayed payments strictly as per the applicable MCLR-based rate of 10.90% and prepare a revised table showing updated interest amounts payable by the complainants. The Respondent shall furnish a copy of the said revised calculation to the complainants for their reference and necessary response.

33. Now, issue which remains to be adjudicated is delay interest. Respondent has offered valid possession of unit after receipt of occupation certificate on 13.02.2023. The said offer of possession is made after the delay of 5 years as deemed date of handing over of possession was 12.06.2018. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottees can demand and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession i.e., 12.06.2018 up to the date of valid offer of possession after receipt of occupation certificate, i.e., 13.02.2023. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.



34. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

“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”.

35. The definition of term ‘interest’ is defined under Section 2(z) of the Act which is as under:

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

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

36. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “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".

37. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 04.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.90%.
38. Hence, Authority directs the respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+2 % which as on date works out to 10.90%. (8.90%+ 2.00%) from the due date of possession i.e., 12.06.2018 to date of valid offer of possession, i.e., 13.02.2024.
39. Authority has got calculated the interest on total paid amount from due date of possession i.e., from the due date of possession i.e. 12.06.2018 to date of valid offer of possession, i.e., 13.02.2023, which works out to ₹26,90,546/- as per detail given in the table below:



Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 13.02.2023
1.	52,74,956/-	12.06.2018(Deemed Date of Possession)	₹26,90,546/-

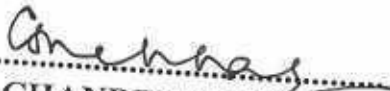
40. The complainants are also seeking compensation towards mental harassment suffered due to the inordinate delay in handing over possession, along with the costs of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra.), 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

41. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act, 2016 to ensure the compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016



- i. Complainants are directed to accept the offer of possession issued by the respondent on 13.02.2023 and take physical possession of the booked units from the respondent.
 - ii. Respondent is directed to pay delay interest of ₹26,90,546/- to the complainants towards delay caused in handing over the possession.
 - iii. The respondent shall issue fresh statement of account to the complainant(s) incorporating therein the principles laid down in this order within 30 days of uploading of this order.
 - iv. Further respondent is directed to execute the Conveyance Deed within 90 days of taking over of actual possession by the complainants.
 - v. The rate of interest chargeable from the allottees by the promoter in case of default shall be charged at the prescribed rate, i.e., 10.90% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
42. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]