

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

**Complaint no. :** 5534 of 2023  
**Complaint filed on:** 05.12.2023  
**Order pronounced on:** 24.04.2024

**Gauri Anand**

R/o: House No.-65, DDA Pkt-1, Sector-23,  
New Delhi-110077

**Complainant**

**Versus**

**M/s Aurochem Buildprop Pvt.Ltd**

Regd. Office: B-100, Second Floor, Naraina Industrial  
Area, Phase-1, Delhi- 110028

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Dinesh Kumar Dakoria

None

**Complainant  
Respondent**

**ORDER**

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

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

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

S. No.	Particulars	Details
1.	Name and location of the project	"EARTH COPIA", Sector 112, Gurugram
2.	Nature of the project	Residential group housing
3.	DTCP License No.	35 of 2011 dated 22.04.2011 valid u to 21.04.2015
4.	RERA Registration	Not Registered
5.	Unit no.	902,9 <sup>th</sup> Floor, tower B
6.	Date of booking	07.07.2015
7.	Allotment letter	01.10.2015
8.	Date of buyer's agreement	16.08.2016 (as per page 27 of complaint)
9.	Possession clause	<p><b>11. Schedule for possession of the said apartment</b></p> <p><i>The company based on its present plans and estimates and subject to all just exceptions shall endeavour construction of the said building/said apartment within a period of 36 months plus grace period of 6 months after the date of receipt of all the approvals and execution of this agreement unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause 14 and 15 or due to failure of allottee to pay in time the total cost and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee to abide by all or any of the terms and conditions of this agreement.</i></p> <p>(Page 40 of complaint)</p>
10.	Due date of possession	16.02.2020

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		(As date of approval is not available on record. Hence calculated from date of execution of BBA)
11.	Sale Consideration	Rs. 1,13,14,756/- (as per page 55 of complaint)
12.	Amount paid by the complainant	Rs.96,40,755/- (As per page 66 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- i) That in the year of 2011, the respondent promoter launched a residential group housing project named "Earth Copia" under license no. 35 of 2011 on the land measuring 10.318 acres, sector -112, Bajghera, Tehsil & District-Gurugram-121001, Haryana and published various attractive advertisements.
- ii) That on 07.07.2015, the complainant booked a flat/apartment no. 902, 9<sup>th</sup> floor, Tower-B, area measuring 1835 sq. ft. under the construction linked plan for a total sale consideration of Rs. 1,13,14,765/- and initially paid the booking amount of Rs.10,00,000/- vide cheque no. 216183 dated 07.07.2015 to the respondent builder.
- iii) That on 01.10.2015, the respondent builder issued the allotment letter dated 01.10.2015 in the favour of the complainant for allotment of the aforesaid flat.
- iv) That on 16.08.2016, the respondent company executed/signed apartment buyer agreement dated 16.08.2016 with the complainant. Seeing the terms and conditions of the apartment buyer agreement,

the complainant shocked and dismayed, since the terms and conditions of the said agreement were absolutely one sided, discriminatory and unfair, however there was no option to the complainant at that time but to sign the said agreement, because the complainant had paid the huge amount to the respondent company under the compelling circumstances.

- v) That as per clause no. 11 of the floor buyer-seller agreement, physical possession of the said flat was to be handed over by the respondent company to the complainant within a period of 36 months plus grace period of six months after the date of receipt of all the approvals and execution of this agreement i.e. 16.08.2016, however the respondent builder miserably failed to perform/complete its promise/undertaking/assurances. It is relevant to mention herein that the said project is standstill since last 4 years approx. and there is no chance in future also. The project has been lying abounding since last 4 years and the respondent company has been withholding and utilizing the hard-earned money of the complainant illegally.
- vi) That it is on record that out of total sale consideration of Rs. 1,1314,765/-, the respondent promoter has received a sum of Rs. Rs.96,40,755/- till dated from the complainant by sending/raising untimely false and frivolous demand letters without executing the actual construction work on the site against. The said amount was paid by the complainant under the compelling circumstances created by the respondent company knowingly and intentionally. In fact, there was no option to complainant at that time except to fulfil the illegal, unreasonable, untimely and unjustified demands of the respondent company.

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- vii) That in the month of June, 2018, the officials of respondent builder misguided the complainant by supplying false and frivolous information and suggested to file the claim before Mr Surinder Kumar CA. Interim resolution professional appointed for the company M/s Earth Infrastructures Limited.
- viii) That on 30.12.2018, as per advice of respondent builder, the complainant submitted her claim form before the interim resolution professional.
- ix) That the complainant herself and her old age father repeatedly visited in the office of interim resolution professional for more than 3 years, ultimately only on 16.06.2022, the interim resolution professional sent an email communicating that "with reference to our earlier trial mail, after further verification of claim documents we found that the claim belongs to Aurochem Buildprop Pvt. Ltd and not to Earth Infrastructures Ltd. so we hereby reject the claim."
- x) The complainant has been running pillar to post since last about 7 years and has been visited in the office of respondent company number of times and requested either hand over the possession of the flat or refund the hard-earned money along with interests, but in vain. The official of respondent company flatly refused to refund the amount of complainant.
- xi) The respondent company wants to grab the hard-earned money of the complainant with malafide intention. In fact, the respondent has cheated number of innocent allottees.
- xii) That the complainant has been visited at the project site as well as promoter's office personally number of times, but the managing director of respondent company did not make any proper response,

even he refused to meet the complainant. Moreover, the employees of respondent company are not giving any reply/response to the queries of complainant. Due to the act and conduct of the respondent company and its employees, the complainant has been facing mental stress since long time.

- xiii) The complainant and other allottees visited in the office of respondent company and requested for refund of their hard-earned money along with interest, but the managing director and its employees flatly refused to refund their hard-earned money.
- xiv) The intention of the managing director of the respondent company is only to grab the hard-earned money of the complainant with malafide intention. In fact, the respondent has cheated the number of innocent allottees under this project.
- xv) The complainant has been facing great mental pain, agony and harassment due to the illegal act and conduct of the respondent company because the respondent company had launched the in the year of 2011 and the said flat was booked by the complainant on 24.07.2015 and the possession of the flat was to be handed over in December, 2019, but the respondent company completely failed to complete its obligation under the apartment buyer agreement. Now the period about 7 years has been elapsed and the builder is not in position to hand over the possession of the flat to the complainant. In fact, the respondent builder is also having no intention to refund the hard-earned money of the complainant.
- xvi) The project of the respondent is situated in Sector -112, Gurugram in which the flat in question has been booked. Further, the respondent is having its site office at Gurugram at the project site. The cause of

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action has been arisen at Gurugram; therefore, this Hon'ble court is having territorial Jurisdiction to entertain and decide the present complaint.

- xvii) That no similar complaint has been decided earlier between the parties by any other court of law / forum within the territory of India.
- xviii) That the complainant is aggrieved with the act and conduct of the respondent company and its directors / officials. In fact, they want to grab the hard-earned money of the complainant; hence by way of this complaint the complainant seeks the indulgence of this Hon'ble authority for direction to the respondent company and its director/employees/official to refund the entire amount of the complainant along with interest and appropriate compensation. Hence this complaint.

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

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

- i. Direct the respondent company to refund the amount of Rs. 96,40,755/- along with interest as applicable as per the provisions of The Real Estate (Regulation and Development) Act, 2016 calculated from the dates of receipt of each payment and till its actual realisation.
- ii. Direct the respondent company to pay a sum of Rs. 5,00,000/- to the complainant on account of litigation expenses, since the complainant has been compelled by the respondent company to initiate unwarranted litigation.
- iii. Direct the respondent company to pay a sum of Rs. 50,00,000/- as compensation to the complainant for mental agony, pain and sufferings, harassment, loss of opportunity.

**D. Reply by the respondent:**

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5. That present complaint was filed on 05.12.2023 and registered as complaint no. 5534 of 2023. The authority issued a notice dated 05.12.2023 to the respondent by speed post and also on the given email address at [secretarial@earthinfra.com](mailto:secretarial@earthinfra.com) on 06.12.2023. Again, a notice was issued to the respondent on 04.07.2024 through speed post which was duly received by the respondent on 18.07.2024. However, none appeared on behalf of the respondent.
6. The respondent was directed to file reply in the registry vide proceedings dated 24.10.2024. The respondent neither filed reply despite adequate opportunity given. Thus, vide proceedings dated 23.01.2025, the defence of the respondent was struck off.

**E. Jurisdiction of the Authority**

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

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**



\*\*\*\*  
(4) *The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all 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.*

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine.*

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*keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

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

**F.1 Direct the respondent the respondent company to refund the amount of Rs. 96,40,755/- along with interest as applicable as per the provisions of The Real Estate (Regulation and Development) Act, 2016 calculated from the dates of receipt of each payment and till its actual realisation.**

13. The complainants were allotted a unit in the project of respondent "EARTH COPIA" at sector 112, Gurgaon vide allotment letter dated 01.10.2015 for a total sum of Rs.1,13,14,756/- and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs. 96,40,755/-. The complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec.18(1) proviso 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, —*

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

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in*





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

14. As per clause 11 of the draft agreement provides for handing over of possession and is reproduced below:

*Subject to clause 11 , The company based on its present plans and estimates and subject to all just exceptions shall endeavour construction of the said building/said apartment within a period of thirty six months plus grace period of 6 months after the date of receipt of all the approvals and execution of this agreement unless there shall be delay or failure due to Force Majeure conditions including but not limited to reasons mentioned in clause 14 and 15 or due to failure of allottee to pay in time the total cost and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee to abide by all or any of the terms and conditions of this agreement.*

15. On consideration of the above-mentioned clause, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11 of the agreement, the possession of the subject unit was to be delivered within a period of 36 months with an additional grace period of 6 months after the date of receipt of all the approvals and execution of this agreement. The due date determined in similarly situated units of the above project is calculated 36 months from the date of execution of this agreement i.e., 16.08.2016. Accordingly, the due date of possession comes out to be 16.02.2020 (date of execution of this agreement + 6 month of grace period is allowed unconditionally) and there is a delay of more than 3 years on the date of filing of complaint to handover the possession of the allotted unit.
16. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated is still not received till date. The complainant is seeking refund of the amount received by the promoter on failure of

promoter to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement, wished to withdraw from the project.

17. Keeping in view the fact that the allottees/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
18. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest as provided under rule 15 of the rules. Rule 15 has been reproduced as under

*Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]  
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.
20. 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., 24.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

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

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

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

22. Further in the judgement of Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1)** reiterated in case of **M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. It was observed as under:

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

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23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.

**F. II Direct the respondent to pay litigation cost of Rs. 5,00,000/- to the complainant on account of litigation expenses, since the complainant has been compelled by the respondent company to initiate unwarranted litigation.**

**F. III Direct the respondent company to pay a sum of Rs. 50,00,000/- as compensation to the complainant for mental agony, pain and sufferings, harassment, loss of opportunity.**

24. The complainant is seeking above mentioned reliefs w.r.t. compensation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357* held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

#### **G. Directions of the Authority**

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

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26. The respondent is directed to refund the entire amount of Rs. 96,40,755/- paid by the complainant along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
27. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
28. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of the complainant.
29. Complaint stands disposed of.
30. File be consigned to registry.

**Dated: 24.04.2025**

**HARERA**  
**GURUGRAM**

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