

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

Complaint no. : 1123 of 2024
Date of filing : 15.04.2024
Date of Order : 27.03.2025

Sunita Yadav

R/o: 1482/3, Old Delhi Road, Rajiv
Nagar, Gurugram, Haryana-122001.

Complainant

Versus

M/s Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: 309,3rd Floor, JMD
Pacific Square, Sector-15, Part-II,
Gurugram-121001.

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Deepak Kumar (Advocate)
Sh. Sidharth Sejwal (AR)

**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 under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.



A. Unit and project related details

2. The particulars of 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	"Paradise" at sector 62, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	5.06875 acres
4.	RERA Registered/ not registered	Registered Vide no. 178 of 2017 dated 01.09.2017 Valid up to 29.05.2021
5.	Unit no.	0905, 09th floor, Tower-T3 (As per page no. 24 of the complaint)
6.	Unit area admeasuring	566 sq. ft. (Carpet area) (As per page no. 24 of the complaint)
7.	Allotment letter	30.11.2016 (As per page no. 15 of the complaint)
8.	Date of apartment buyer's agreement	22.07.2017 (As per page no. 22 of the complaint)
9.	Date of building plan approval	25.07.2016 (As per page no. 16 of the reply)
10.	Environmental clearance dated	28.07.2017 (As per page no. 20 of the reply)
11.	Possession clause	8.1 EXPECTED TIME FOR HANDING OVER POSSESSION Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of

		<p>receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.</p> <p>[Emphasis Supplied] (As per page no. 33 of the complaint)</p>
12.	Due date of possession	28.01.2022 (including grace period of 6 months) [Note: Due date of possession calculated 4 years from the date of environmental clearance dated 28.07.2017, being later]
13.	Total sale consideration	Rs.23,09,500/- (As mentioned in BBA at page no. 26 of the complaint)
14.	Amount paid by the complainant	Rs.24,81,066/- (As mentioned in demand letter dated 09.12.2024 as received installment and tax on page no. 39 of the reply)
15.	Letter/complaint to DTP (for unlawful practice in the project and demanding 20% of sale consideration with obtaining EC)	09.01.2017 (As per page no.54 of complaint)
16.	Reply to letter/complaint	16.02.2017 (As per page no.56 of complaint)
17.	Offer for carrying out the fit-out	09.11.2023 (As per page no.60 of complaint)
18.	Occupation certificate	19.09.2024 (As per page no. 31 of the reply)
19.	Offer of possession	21.09.2024 (As per page no.34 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. The respondent owing to the delay in handing over the unit/flat to the complainant is not only liable to pay the "delay possession charges" as

the committed date if, calculated in terms of clause no. 8.1 of apartment buyer's agreement which is four '4' years from the date of receipt of environmental clearance had already been expired on 26.07.2021 but, till today no occupation certificate had been granted by the office of DTCP, Chandigarh. The respondent is also obligated to recall its demand letter purported to be of dated 09.11.2023, wherein illegal and unwarranted charges had been claimed which neither are the part of apartment buyer's agreement nor the respondent is supposed to claim including the "delayed payment interest/charges". The present complaint also narrates respondent's other illegalities and deficiencies qua the project.

- b. That the respondent is developing and constructing an Affordable Group Housing Colony under the "Affordable Housing Policy 2013, issued by Govt. of Haryana, vide Town & Country Planning Department's Notification dated 19.08.2013 located at, Sector-62 in the revenue estate of Village Ullahawas, District Gurgaon, Haryana known by the Project Name as "Paradise"; whereas the Housing License qua the project vide No. 86/2014 dated 09.06.2014 & License No. 05/2016 dated 30.05.2016 had been granted to the respondent.
- c. That the present project is also registered before this Authority vide RERA registration no. 178 of 2019 on dated 01.09.2017 (RERA-GRG-420/2019), which was valid until 29.05.2021. And to the notice of complainant the present project is currently not registered with present Authority.
- d. That complainant for her own use and occupation under a firm hope and belief to get the possession within a committed period of four ('4') years & as per the Affordable Housing Policy, booked a unit/apartment vide

- application no.1010 on dated 10.09.2016 after depositing a sum of Rs.1,15,475/- as earnest money and submitted the application form.
- e. That complainant on being successful under the draw scheme was allotted apartment/unit no.905 at 9th Floor in Tower-T-3 (ad-measuring carpet area of 566 sq. ft. + 91 sq. ft. as balcony area). Whereas, the balance of the sale price as per the payment schedule was to be payable under time linked payment plan.
- f. That respondent issued allotment letter on dated 30.11.2016 with a payment schedule annexed therein; and demanded next 20% of the sale consideration which was to be payable within '15' days from the issuance of said allotment letter. Whereas, the balance 75% of sale consideration as per the payment schedule was divided in six instalments spread over three years period.
- g. That apartment buyer's agreement was executed between the parties on dated 22.07.2017, wherein certain conditions as stipulated in allotment letter including the committed date of possession and payment plan were reproduced in the buyer's agreement.
- h. That environmental clearance was granted on dated 28.07.2017, being the commencement date of the project, which was to be completed within a period of '4' years. However, respondent before commencement of the project i.e. grant of environmental clearance prematurely demanded 20% of the sale consideration, which respondent was not supposed to pay accordingly, complainant lodged a complaint before District Town Planner at, Gurugram, wherein it was assured by the respondent that no further payment demand would be raised and also persuaded the complainant to pay the said instalment of 20% only after

the grant of environmental clearance. Thus, all further time-linked payment demands were also deferred/re-scheduled.

- i. That respondent subsequently inspite of receiving the amount against payment demands had levied false delayed interest. That in order to curb such unwarranted trade practice, complainant again on many occasions including letter through mail to the respondent on dated 30.01.2020 pointed out the said discrepancies and requested to roll-back such redundant and nefarious acts/payment demands and also the delayed interest levied upon it, which respondent never adhered-to.
- j. Thus, due to said correction due date of all subsequent payment demands were also changed; although, complainant had made paid all payment demands through remittance by the Financial Institution by paying the last installment which was due on dated 28.07.2020 hence, the complainant in total had paid a sum of Rs.23,09,500/- *plus separately had paid* a sum of Rs.28,868/- towards VAT and Rs.1,42,694/- towards CGST & SGST to the respondent being considered as total sale consideration of unit.
- k. That respondent so, as to cover its own wrongs of delay in handing over the unit under mischievous goals & in order to extract more money from the innocent complainant, raised one demand letter dated 09.11.2023 and claimed not only "delayed interest of Rs.1,80,870/-" but, certain other charges also under the heads i.e. "legal charge of Rs.17,700/-", & "Up-gradation electricity charges of Rs.86,937/-", which complainant is not obligated to pay. Apart from that no clarification on GST and VAT about the input tax credit benefit had been given to the complainant.
- l. That complainant is also not obligated to pay any "delayed interest charges of Rs.1,08,870/-" which had been vaguely claimed without any

clarifications amongst reason that payment demands as and when raised by the respondent were not in accordance to the payment plan, which got changed because of the reason that respondent initially demanded 2nd instalment before grant of Environmental License, which not permissible. But, respondent instead to mend its ways of raising such superfluous payment demands continued to levy delayed interest of the payments which had already been remitted by the complainant.

- m. That due to continuance of respondent's act, the complainant never in her life had been so perturbed because, complainant had tried explaining her state of mind but, it seems to be a notion where rationality evaporated by the act of respondent, who without obtaining 'occupation certificate' issued another letter purported to be of dated 09.11.2023 asking complainant to take the physical possession of the unit for carrying 'fit-out' and also demanded certain false charges & delayed interest which complainant is not supposed to pay and/or in consonance with the 'apartment buyer's agreement'.
- n. That from the aforesaid scenario, it transpires that respondent is revolving around an imaginary act of getting the project complete within the time-schedule, which is imperfect hence, this unusual act of delay cannot be condoned by a bunch of experimental acts of respondents. Hence, present complaint seeking delayed possession charges amongst that to roll-back, the illegal charges as falsely claimed in 'demand letter' dated 09.11.2023.
- o. That complainant vide letter/mail dated 30.01.2024 requested the respondent to clarify and roll-back the said delayed interest as well as unwarranted charges as falsely claimed in its letter dated 09.11.2023. But, the respondent in order to cover its own wrongs in response to the

aforesaid mail issued 'calculation sheet of interest' as claimed by the respondent, which is unjustified and illegal. The said calculation sheet also reflects the delayed interest which had already been paid/remitted by the complainant owing to any delayed payment by the complainant in past; but the said calculation sheet nowhere justifies that any further amount is yet to be payable by the complainant.

- p. As stated hereinabove that due to pre-mature payment demands i.e. before grant of 'environmental clearance' by the respondent all payment demands were subsequently deferred and upon the own undertaking given by the respondent before the office of DTP, Gurugram upon the complaint made by the complainant, who stated that respondent shall adhere to the norms and guidelines as stated in Affordable Policy, 2013 but, still the respondent in order to cover its own wrongs is trying to attribute delay of remitting the payments upon the complainant.
- q. That respondent's claim and charge of SGST & CGST is contrary to the VAT (Value added tax), which had been separately claimed and received by the respondent. That by present complaint the indulgence of this Authority directing respondent to clarify its stand about submission of Tax before concerned civic authorities enabling complainant to know advantage of reversal of input tax-credit *if, any*. It is also submitted that respondent/developer is unable to corroborate its claim of collecting the VAT & CGST/SGST from the complainant having apprehension of not being deposited/submitted before the concerned authority/ies.
- r. That however, the committed date expired on dated 26.07.2021; whereas, till today no occupation certificate qua the project had been granted hence, the delay is continuing-one.

C. Relief sought by the complainant:

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

- i. Pass an order under the provisions of RERA Act, 2016 and Rules thereunder, thereby directing the respondent to pay the "delayed possession charges" to the complainant for the period of delay occurred with effect from 26.07.2021 till actual physical handing over of the possession of the unit in question i.e., after grant of occupation certificate.
 - ii. Further restraining respondent to claim delayed interest of Rs.1,80,870/-, Legal charges of Rs.17,700/- & up-gradation electricity charges of Rs.86,937/- from the complainant, thereby directing it to withdraw the said unwarranted charges in its demand letter dated 09.11.2023, as the same are not supposed to be payable by the complainant.
 - iii. Also direct the respondent to furnish the relevant records of submitting the VAT & CGST/SGST (*as collected from the complainant*) before the concerned authorities.
 - iv. Any other relief which the Authority may deems fit in favor of complainant and against the respondent including directing the respondent to pay the litigation cost of Rs.50,000/- to the complainant/respondent to pay interest for every month of delay at prevailing rate of interest from 27.07.2021 till the date of actual handing over of possession.
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) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- a. That the present complaint in the present form cannot be maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.

- b. That this Hon'ble Authority does not have the jurisdiction to adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
- c. That the respondent was granted a License bearing no.05 of 2016 dated 30.05.2016 for the development of an affordable group housing residential colony on the land admeasuring area of 5.06875 Acres situated in the revenue state of village Ullahawas, Sector-62, Gurugram. The respondent thereafter, obtained all the relevant approvals and sanctions to commence the construction of the project. The respondent obtained the approvals of the building plans vide approvals dated 25.07.2016 and also obtained the environmental clearance vide approvals dated 28-07-2017.
- d. That the respondent received the occupation certificate bearing no. ZP-1117-II/PA(DK)/2024/29672, on 19.09.2024, from the concerned authority. Thereafter the respondent issued the offer of possession letter dated 21.09.2024, in favor of complainant, which was delivered through DTDC Express Limited on 24.09.2024.
- e. That due to the outbreak of the pandemic covid-19 in march 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view the difficulties in completing the project by Real Estate Developers, this Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter due to the second covid wave from January to May 2021 once again the construction activities came to a standstill. The covid pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by this Hon'ble Authority was not

sufficient as the effect of labour shortage continue well beyond for more than 12 months after the covid lockdown. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.

- f. That the construction of the project had been obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, New Delhi; Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi; Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period.
- g. That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance, which is later, was incumbent upon the complainant making timely payments. The complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due installments as is evident from the demand letter. Therefore, the complainant is forbidden to demand the timely performance of the 'contractual obligations' by the respondent, wherein the complainant, himself, had failed to perform his part of the 'contractual obligations' on time.
- h. That the present project is an affordable group housing project being developed in accordance with the provision of the affordable housing

policy, 2013. The allotment price of the unit was fixed by the government of Haryana and in terms of the policy, the respondent was paid the allotment price in installment. Though, the allotment price was fixed by the government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost for increased manifold but the government of Haryana had failed to increase the allotment price. The government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of affordable housing policy, 2013. The license for the project paradise was granted on 30.05.2016 and the respondent was permitted to sell the units and the allotment price of Rs.4,000/- per sq. ft. the project is being constructed by the respondent. The construction of the project is completed and the respondent received the occupation certificate on 19.09.2024.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 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.

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 complainant at a later stage.

F. Findings on objections raised by the respondent:**F.I Objection regarding delay due to force majeure circumstances**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain



orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, etc. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration which does not make a huge impact on project which can cause and justify inordinate delay of 2½ years. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020, due to covid-19 there may be a delay but the same has been set off by the government as well as authority while granting extension in registration of the projects, the validity which expired from March, 2020 for a period of six (6) months. The due date of possession in the present case as per clause 8 is come to 28.07.2021, which is after March, 2020. Therefore, an extension of six months is to be given over and above the due date of handing over of possession in view of HARERA Notification no. 9/3-2020 dated 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date for handing over of possession is comes out to 28.01.2022. Thus, no period over and above grace period of 6 months can be given to the respondent-builder. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrong.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to pay the delayed possession charges to the complainant for the period of delay occurred with effect from 26.07.2021 till actual physical handing over of the possession of the unit in question i.e., after grant of occupation certificate.**

13. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to 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, —

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

(Emphasis supplied)

14. Clause 8.1 of the apartment buyer's agreement dated 22.07.2017 provides for handing over of possession and is reproduced below for ready reference:

8. Handing over of possession

8.1 Expected Time for Handing over Possession

"Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authority(ies), the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder."

(Emphasis supplied)

15. The authority has gone through the possession clause of the agreement and observed that the respondent proposes to handover the possession of the allotted unit within four (4) years from the date of approval of building plan or from the date of grant of environmental clearance, whichever is later. As per clause 8.1 of the apartment buyer's agreement dated 22.07.2017, the possession of the allotted unit to be handed over the possession of the allotted unit within four years from the date of approval of building plan i.e., 25.07.2016 or from the date of grant of

environmental clearance i.e., 28.07.2017, whichever is later. And hence, the due date is calculated from the date of environmental clearance i.e., 28.07.2017 being later. Therefore, the due date of possession comes out to be 28.01.2022 (by adding a period of six months due to covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020).

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

17. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. 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., 27.03.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

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

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
20. 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 the complainant in case of delayed possession charges.
21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, 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 8.1 of the buyer's agreement, the due date of handing over of possession of the unit in question is 28.01.2022 (calculated from the date of environmental clearance, being later, including additional period of six months HARERA notification no.9/3-2020 dated 26.05.2020 for the projects having

completion date on or after 25.03.2020.). Occupation certificate was granted by the concerned authority on 19.09.2024 and thereafter, the possession of the subject unit was offered to the complainant on 21.09.2024. Copies of the same have been placed on record. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer the possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 22.07.2017 executed between the parties.

22. Section 19(10) of the Act obligates the allottee 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 19.09.2024. The respondent offered the possession of the unit in question to the complainants only on 21.09.2024, so it can be said that the complainants 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 months of reasonable time is being given to the complainants 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 till the expiry of 2 months from

the date of offer of possession (21.09.2024) which comes out to be 21.11.2024.

23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondent is established. As such the complainant is entitled to delayed possession charges at prescribed rate of interest i.e., 11.10% p.a. by the promoter from due date of possession i.e., 28.01.2022 till the expiry of 2 months from the date of offer of possession (21.09.2024) after obtaining the occupancy certificate, which comes out to be 21.11.2024 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Restrain the respondent to claim delayed interest of Rs.1,80,870/-, Legal charges of Rs.17,700/- & up-gradation electricity charges of Rs.86,937/- from the complainant. Further direct the respondent to withdraw the said unwarranted charges in its demand letter dated 09.11.2023.

• **Delayed Interest**

24. During the proceedings dated 27.03.2025, the counsel for the complainant submits that after receipt of 5% of sale consideration and after issuance of allotment letter, the respondent-promoter has demanded 20% of sale consideration from the complainant-allottee, which the respondent cannot claim till receipt of environmental clearance, as per the Affordable Housing Policy, 2013 and interest upon any invalid demand for such period is not maintainable.
25. The Authority would like to clarify that as per Clause 5 (iii) (b) of Annexure-A of Affordable Housing Policy, 2013, the complainant-allottee required to pay additional 20% amount of the total cost of the flat at the time of allotment of flat and the balance 75% amount of the total cost will be payable as per the stages of construction as prescribed in builder buyer's agreement, as amended in 2021 vide amendment memo no.PF-



27-III/2021/28851, dated 16.11.2021 and before the amendment, the balance 75% amount of total cost will be payable in six equated six monthly instalments spread over three-year period, with no interest failing due before the date of payment. The relevant Clause 5 (iii) (b) of Annexure-A of Affordable Housing Policy, 2013, as amended upto 16.11.2021 is reproduced below:

5(iii)(b)

...the applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. The balance 75% amount of the total flat cost will be recovered as per the stages of construction as prescribed in builder buyer's agreement...

[Emphasis Supplied]

26. Further, if there is any delay on part of complainant-allottee in making timely payment, the 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 the complainant in case of delayed possession charges, as per Section 2(za) of the Act, 2016.
27. The Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee, and the respondent and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020.

- **Up-gradation of Electricity Charges & Legal charges.**

28. The complainant contended that in the demand letter dated 09.11.2023, the respondent has demanded an amount of Rs.86,937/- on account of

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up-gradation of electricity charges and legal charges of Rs.17,700/-, the said charges are not payable by the complainant. However, vide email dated 30.01.2024, the complainant has raised a query and requests for clarification on specific charges, which remains un-responded by the respondent.

29. Upon consideration of documents and submission made by both parties. The Authority is of the view, that the respondent is entitle to levy charges in accordance with the Affordable Housing Policy, 2013 and as per the terms of buyer's agreement executed inter-se parties. Moreover, as per clause 4.9 of the said agreement, it is agreed between both the parties, that upon demand by the company, the allottee shall pay such amount for initial electricity connection charges, power back up charges and any similar infrastructure or utility based charges of all and any kind by whatever name called, as may be reasonably required in respect of the apartment or the project and the same shall be paid on pro-rate basis and the determination of proportionate share by the company. The relevant clause is reproduced hereinbelow:

4.9 Payment of Miscellaneous Charges

The allottee agrees and undertakes to pay as and when demanded by the company, initial electricity connection charges, power back up charges (if applicable) and any similar infrastructure or utility based charges of all and any kind by whatever name called, as may be reasonably required from the allottee in respect of the apartment or the project, failing which the same shall be treated as unpaid proportion of total price payable by the allottee and the conveyance of the said apartment may be withheld by the company till full payment thereof is received by the company. The same shall be paid on pro-rate basis and the determination of proportionate share by the company and demand thereof shall be final and binding on the allottee.

30. The Authority is of the view, the respondent/promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis in lieu of essential services such as water & electricity meter charges etc subject to furnishing the proof of

such payments made to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. Further, the respondent cannot charge any amount from the complainant-allottee, which is not a part of buyer's agreement or is in violation of the Affordable Housing Policy, 2013.

G.III Direct the respondent to furnish the relevant records of submitting the VAT & CGST/SGST (as collected from the complainant) before the concerned authorities.

31. The respondent is directed to furnish the details of the payment made to the concerned Authority w.r.t VAT, CGST and SGST to the complainant within a period of 30 days.

G.IV Any other relief which the Authority may deems fit in favor of complainant and against the respondent including Directing the respondent to pay the litigation cost of Rs.50,000/- to the complainant.

32. The complainant is also seeking relief w.r.t litigation cost. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:


33. 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):



- i. The respondent is directed to pay delay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 28.01.2022 till offer of possession (21.09.2024) after obtaining the occupancy certificate plus two months i.e., 21.11.2024 as per proviso to section 18(1) of the Act read with rule 15 of the rules. The arrears of such interest accrued so far shall be paid to the complainant within a period of 90 days from date of this order as per rule 16(2) of the Rules, 2017.
- ii. The rate of interest chargeable from the allottee(s) 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(zb) of the Act.
- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within a period of 30 days and the complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period. Further, the respondent shall handover the possession of the allotted unit within a period of next 30 days.
- iv. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainant or to be paid by the respondent on account of delay for the above said covid period.



- v. The respondent is further directed to not to charge anything from the complainant which is not a part of buyer's agreement or Affordable Housing Policy, 2013.
- vi. The respondent is further directed to pay Rs.10,000/- to the complainant as cost imposed by this Authority vide order dated 18.07.2024 and 12.09.2024 for delay in filing reply to the instant complaint.
34. Complaint stands disposed of.
35. File be consigned to registry.



(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.03.2025

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GURUGRAM