

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

Complaint no.: 5576 of 2024
Date of decision:- 21.05.2025

Sonali Mittal
R/o: - 503, Mermaid Building,
Next to Palm Grove Hotel,
Mumbai-400049..

Complainant

Versus

M/s. Anant Raj Limited
Regd. office: CP01, Sector-08, IMT Manesar,
Gurugram, Haryana-122051.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Daggar Malhotra (Advocate)
Shivani Dang (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 08.12.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter*

alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| Sr. No. | Particulars | Details |
|---------|---------------------------|---|
| 1. | Name of the project | The Estate Floors |
| 2. | Location of the project | Sectorr-63-A, Kadarpur, Gurugram. |
| 3. | Total area of the project | 10789.31 sq.mtrs |
| 4. | Nature of the project | Residential colony |
| 5. | DTCP license no. | License No.-119 dated 28.12.2011 |
| 6. | Registered/not registered | Registered Vide registration no. 27 of 2022 dated 18.04.2022 |
| 7. | Allotment letter | 23.07.2013 |
| 8. | Unit no. | Plot no-7, Pocket-E, Floor-2, Independent floor unit-7 |
| 9. | Area of the unit | 2226sq.ft. [Super-Builtup area] |



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|-----|--------------------------------------|--|
| | | (As on page no. 21 of complaint) |
| 10. | Floor Buyer's agreement | 11.03.2015 (As on page no. 20 of complaint) |
| 11. | Possession clause | Clause 4. COMPLETION <i>4.2 The Developer shall endeavor to handover possession of the Floor Unit within 36 months from the date of execution of this Floor Buyer Agreement with a grace period of 6 months ("Tentative Handover Date"). Notwithstanding the same, the Developer shall at all the times be entitled to an extension of time from the Tentative Handover date, if the Completion of The Colony where the said Floor Unit is situated is delayed on account of any Force Majeure Event.</i> [Emphasis supplied] (As on page no. 31 of complaint) |
| 12. | Due date of possession | 11.09.2018 [Calculated 36 months from the date of execution of floor buyer's agreement plus grace period of six months] |
| 13. | Total sale consideration | Rs.2,05,21,054/- (As on page no. 21 of complaint) |
| 14. | Total amount paid by the complainant | Rs.1,86,31,574/- (As on page no. 80 of complaint) |

| | | |
|-----|--|---|
| 15. | Legal notice sent by complainant regarding DPC and illegal demands | 30.12.2022 (As on page no. 103 of complaint) |
| 16. | Occupation certificate | 25.04.2022 (As on page no. 79 of complaint) |
| 17. | Offer of possession | 27.05.2022 (As on page no. 80 of complaint) |

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That the complainant applied for booking of residential apartment in the respondent's project namely, "The Estate Floors" located in Sector - 63 A, Kadarapur, Gurugram. Vide Allotment Letter dated 23.07.2013, the complainant was allotted an "Independent Floor" unit bearing no. 07 on Second Floor constructed on plot no.07 in Pocket - E, having super area of 2225 sq. ft. at a total sale consideration of Rs.2,05,21,054/-
 - II. That the complainant and the respondent entered into a "Floor Buyers Agreement" on 11.03.2015. As per Clause 4.2 of the Agreement, the respondent was obligated to handover the possession of the unit within a period of 36 months from the date of signing and execution of the Agreement with an extended grace period of 6 months. Therefore, the due date of possession was 11.09.2018. That, taking into account the severe delay in completion of construction on the part of respondent, the respondent is not qualified to take benefit of additional grace period and it is therefore submitted that 11.03.2018 should be treated as the due date of possession.

- III. That the complainant has paid a total of Rs.1,87,29,585/- to the respondent and all payments demanded by the respondent have been paid timely by the complainants. After a delay of approximately 3 years and 8 months (i.e., 44 months in total), the respondent offered possession of the unit to the complainant vide Offer of Possession dated 27.05.2022.
- IV. That on receipt of Offer of Possession, the complainant time and again requested the respondent to make appropriate adjustments payment of Delay Possession Charges rightly due to be paid by the respondent. The complainant sent several emails to the respondent citing the harassment caused to her by the severe delay on part of the respondent in handing over possession of the unit.
- V. That the said unit was purchased to be used as a residential accommodation for her parents and on account of failure on part of the respondent to adhere to its obligation of timely completion of construction, the complainant was compelled to purchase a residential unit elsewhere for her aging parents. The respondent has in its responses, cited outbreak of Covid as a reason of delay in completion of construction. That, it is an admitted fact the unit was due to be delivered by 11.09.2018 (inclusive of grace period) i.e., due date of delivery expired much prior to outbreak of covid and the same cannot be applied a reason for delay in the facts and circumstances of this matter. The respondent has completely brushed aside its liability to pay Delay Possession charges to the complainant on false and frivolous ground.
- VI. That it is a well-settled principal of law that no person can be allowed

to take advantage of its own wrong. The respondent was in breach of its obligation much prior to the outbreak of Covid and hence the same cannot be used as an excuse for the delay.

VII. That, as per section 11(4) (a) of the RERA Act, The promoter shall 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: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay interest/charges for delay on total paid amount @ prescribed rate of interest from 11.09.2018 i.e., the due date of possession as per Floor Buyers' Agreement, till the date of offer of possession.
- ii. Direct the respondent to handover of possession of the said unit.
- iii. Award compensation to the tune of Rs.25,00,000/- or such amount as the Authority may deem fit, in the favour of the complainant and against the respondent.
- iv. Award litigation costs to the tune of Rs.1,50,000/-

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.

- I. That the respondent is engaged in the business of construction and development of real estate projects and has carved a niche for itself in the real estate sector. That the present complaint, is not maintainable as the complainant has failed to disclose any maintainable cause of action under the said provisions of the Act as alleged.
- II. That the complainant after checking the veracity of the project approached the respondent and expressed her interest in booking a unit in the residential project developed by the respondent known as "The Estate Floors", situated in Sector-63A, Kadarapur, Gurugram, Haryana.
- III. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and it was only after she was fully satisfied about all aspects of the project, she took an independent and informed decision, un-influenced in any manner by the respondent, to book the unit in question.
- IV. That thereafter the complainant vide an application form dated 03.06.2013, the subject unit was confirmed by the respondent. That, the Application Form being the preliminary and the initial draft contained the basic and primary understanding between both the parties, was followed by the Floor Buyer's Agreement.
- V. Thereafter, immediately on 11.03.2015, the "Floor Buyer Agreement" was executed between the complainant and the respondent which contained the final understandings between the parties stipulating all the rights and obligations. The complainant, in pursuance of the

aforesaid Floor Buyer Agreement, was allotted a unit bearing no. 7, 2nd Floor, located in the building constructed on Plot No. 7 in Pocket-E admeasuring 2226 sq.ft. in the project vide a Floor Buyer Agreement dated 11.03.2015.

- VI. That the complainant consciously and wilfully opted for a "Construction linked payment plan" for remittance of the sale consideration for the unit in question and further represented to the respondent that she shall remit every installment on time as per the payment schedule.
- VII. That the complainant was allotted the unit at the basic price of Rs.8326.36 per sq. ft. It is submitted the basic sale consideration of the unit was Rs.1,99,00,000/-, whereas total sale consideration was Rs.2,05,66,810/-. However, it is submitted that the sale consideration was extensive of the Registration Charges, Stamp Duty Charges, Service Tax and other charges which were to be paid by the complainant at the applicable stage.
- VIII. It is submitted that the complainant defaulted in making payments towards the agreed sale consideration of the flat from the very inception i.e. after signing the allotment letter, since respondent had to send numerous demand letters to the complainant in order to receive payment for the project.
- IX. That as per the payment plan under "Schedule-IV" of the Floor Buyer Agreement, the complainant was supposed to pay 95% of the total sale consideration before the offer of possession. However, the complainant, till date has only paid 85% of the total sale consideration.

- X. That the complainant has no cause of action to file the present complaint as the same is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Flat Buyer Agreement dated 11.03.2015.
- XI. It is further submitted that the complainant is an investor and have booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainant has filed the present purported complaint to wriggle out of the agreement.
- XII. That the complainant vide an email dated 17.09.2022 offered the respondent to sell the unit in the Open market and provide a good deal for the complainant. It is pertinent to note that the complainant was on one hand engaged with the respondent for amicable settlement whereby she was exploring various options of sale of unit and/or waiting for some period to get the better rates of property, on the other hand they filed complaint with the Authority.
- XIII. That the construction of the project was stopped on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

- XIV. That the possession of the unit as per clause 4.2 of the Floor Buyer Agreement was to be handed over within 36 months (plus the grace period of 6 months) from the date of the execution of the Flat Buyer Agreement and not from the date of terms and conditions as stated by the complainant who is trying to confuse the Authority with her false, frivolous and moonshine contentions.
- XV. The date of the completion of the project therefore comes out to be 11.09.2018. In addition to this, the date of possession as per the Flat Buyers Agreement further increased to grace period of 6 months. The date of the completion of the project was further pushed due to the force majeure conditions i.e. due to the NGT orders and the lockdown imposed because of the worldwide Covid-19 pandemic, by which the construction work all over the NCR region came to halt. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months.
- XVI. That the project at present date the stands completed and has received the occupation certificate (OC) from the competent authority on 25.04.2022. Therefore, it will be difficult for the respondent to pay any interest on the delayed possession at this stage as the respondent has already sent the possession certificate to the complainant on 22.05.2022.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 complainants at a later stage.

F. Findings on objections raised by the respondent:

F.1 Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, NGT ban on construction activity, entry of diesel trucks carrying construction material, mobilization of labours, due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the allotment letter was issued by the respondent to the complainant on 23.7.2013. The 'Floor Buyer's Agreement' was executed between the parties on 11.03.2015. As per clause 4 of the Agreement dated 11.03.2015, the respondent undertook to handover possession of the unit to the complainant within 36 months from the date of execution of this agreement with a grace period of 6 months. Thus, the due date comes out to be 11.09.2018. The respondent is seeking the benefit of Covid-19, which came after the due date of possession and hence, the relief regarding the same cannot be granted in favour of the respondent. Thus, no period over and above the grace period of six months can be given to the respondent-builder and no more leniency can be granted to the respondent based on the aforesaid reasons.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay interest/charges for delay on total paid amount @ prescribed rate of interest from 11.09.2018 i.e., the due date of possession as per Floor Buyers' Agreement, till the date of offer of possession.

G.II Direct the respondent to handover of possession of the said unit.

14. In the present complaint, the complainant booked a unit in the project of the respondent namely "The Estate Floors" situated at Sector-63-A, Village-Kadarpur, Gurugram. The allotment was made in favour of the complainant on 23.07.2013 and thereafter, the Floor Buyer's Agreement was executed between the complainant and the respondent on 11.03.2015. As per Clause 4 of the Agreement dated 11.03.2015, the respondent was obligated to handover possession of the unit within 36 months from the date of execution of the Floor Buyer Agreement with a grace period of 6 months. The due date is calculated 36 months from the date of execution of the Agreement dated 11.03.2015. Also, a period of six months is granted to the respondent in lieu of the same being agreed between the parties. Thus, the due date of possession comes out to be 11.09.2018.

15. The complainant intends to continue with the project and is seeking possession and delay possession charges along with interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
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."

16. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of thirty six months from the date of execution of the Agreement. In the present matter, the Floor Buyer's Agreement was executed between the complainant and the respondent on 11.03.2015. The grace period of six months shall be allowed to the promoter on account of the same being agreed between the complainant and the respondent in the agreement and the same being unqualified.

17. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

18. 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.

19. 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., 21.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
20. 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;"*

21. 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.
22. On consideration of the documents available on record and submissions made 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 4 of the Floor Buyer Agreement dated

11.03.2015, the possession of the subject apartment was to be delivered by 11.09.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 11.09.2018. The respondent has obtained the Occupation certificate from the competent authorities on 25.04.2022 and thereafter offered the possession of the subject apartment to the complainant on 27.05.2022, which is delayed than the due date of possession of the unit. 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 stipulated period.

23. The non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 11.09.2018 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.III. Award compensation to the tune of Rs.25,00,000/- in favour of the complainant and against the respondent.

G.IV. Direct the respondent to pay litigation cost of an amount of Rs.1,50,000/-

24. The complainant is seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

H. Directions of the authority

25. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 11.09.2018 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. The respondent is directed to provide a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days of this order to the complainant.
 - iii. The respondent is directed to handover possession of the unit to the complainant within 30 days thereafter, on payment of outstanding dues, if any.
 - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the

promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within sixty days of the order.
- vi. The respondent shall not charge anything from the complainant which is not a part of the agreement.
26. Complaint stands disposed of.
27. File be consigned to registry.



Ashok Sangwan
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.05.2025

HARERA
GURUGRAM