

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

**Complaint no.:** 3051 of 2024  
**Date of order:** 01.04.2025

Shri Mark Dushyant Martin

**R/O:** C-171, New Town Heights, Sector-86,  
Gurugram- 122003, Haryana

**Complainant**

Versus

M/s Chirag Builtech Private Limited

**Registered Office at:** - Building No. 80, 1<sup>st</sup> Floor,  
Sector- 44, Gurugram - 122003

**Respondent**

**CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

**Chairman**

**Member**

**Member**

**APPEARANCE:**

Shri Rishabh Jain (Advocate)

Shri Garvit Gupta (Advocate)

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 29 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 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:

S. No.	Particulars	Details
1.	Name of the project	"ROF Ananda"
2.	Location of project	Village-Dhorka, Sector-95, Gurugram.
3.	Nature of project	Affordable group housing
4.	RERA Registered	Registered vide registration no. 184 of 2017 dated 14.09.2017 Valid up to 13.09.2021
5.	DTPC License no.	17 of 2016 dated 25.10.2016 Vaild up to 28.02.2025
	Name of licensee	Naryan Singh S/o Jhuthar Singh, Rajesh S/o Jhuthar Singh, Smt. Bimla Wd/o Satbir, Kavita, Babita, Pooja Ds/o Satbir.
6.	Allotment Letter	Not available
7.	Unit No.	F-1211, Tower-F, Floor-12 <sup>th</sup> (As on page no. 44 of complaint)
8.	Unit Area	369.98 sq. ft. [Carpet Area] 56.73 sq. ft. [Balcony area] (As on page no. 44 of complaint)
9.	Buyer's Agreement	28.03.2022 (As on page no. 43 of complaint)
10.	Possession Clause	<b>Clause 7 POSSESSION OF THE SAID FLAT</b> <i>7.1 .....the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later ("Commitment period")...</i> <i>[Emphasis supplied]</i>
11.	Environmental clearance	09.10.2017
12.	Due date of Possession	09.04.2022 [Calculated 4 years from date of E.C + 6 months grace period]

13.	Total sale consideration	Rs.15,08,285/- (Page no. 48 of complaint)
14.	Amount paid by the complainant	Rs.14,90,000/-
15.	Cancellation letter	09.02.2024 (As stated by the respondent in the application for dismissal of the complaint)
16.	Occupation certificate	22.02.2022
17.	Offer of possession	23.02.2022 (As per annexure R/6, at page no. 65 of reply)

**B. Facts of the complaint:**

3. The complainant made the following submissions in the complaint.
- I. That the respondent published very attractive brochure, highlighting the Affordable Group Housing Colony 'ROF Ananda' situated at village Dhoraka, Sector - 95, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy the flats in the project including the complainant. There are fraudulent representations, incorrect and false statements in the brochure.
  - II. That the was invited to the sales office and was lavishly entertained and promises were made to him that the possession of the flats would be handed over in time including that of parking, horticulture, club and other common areas. He was impressed by their oral statements and representations and made an application for allotment of a flat in the Project "ROF Ananda", situated at Sector - 95, Gurugram, Haryana via application no. 10080 dated 2<sup>nd</sup> February 2022. The complainant paid an amount of Rs.1,40,000/- via cheque no. 000057 dated 2<sup>nd</sup> February 2022

as registration amount to the respondent, Chirag Build tech Private Limited.

- III. The complainant was allotted a flat bearing no. F-1211 (Type - B, 1 BHK) having carpet area of 369.98 square feet and balcony area of 56.73 square feet for a total consideration of Rs.15,08,285/- in the project "ROF Ananda", Sector - 95, Gurugram, Haryana. On 21.02.2022, the respondent issued a demand letter to the complainant raising a lump sum demand of Rs.14,88,947.80/- for the flat without executing the agreement for sale with the complainant. The complainant made the payment of Rs.7,00,000/- & Rs.3,50,000/- via NEFT on 23.02.2022 and 01.03.2022 respectively to the respondent for the flat. That till date i.e., 07.03.2022, the complainant had paid a total of Rs.11,90,000/-, more than 78% of the total cost of the flat to the respondent without executing the agreement for sale. The respondent violated Section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the flat before the execution of the agreement for sale.
- IV. That the agreement for sale was executed between the complainant and the respondent on 28.03.2022 for the allotted flat no. F-1211 (Type B, 1 BHK) at 12th floor in Tower F measuring carpet area of 369.98 sq. ft. at the rate of Rs.4000/- per sq. ft. and balcony area of 56.73 sq. ft. at the rate of Rs.500/- per sq. ft. with a free two wheeler open parking in the project 'ROF Ananda' at Sector 95, Gurugram. The total consideration of the flat is Rs.15,08,285/- including balcony area charges. The payment plan was provided at annexure-B, at page 29 of the agreement.



- V. That the date of possession of the flat is calculated three (3) years from the date of execution of agreement dated 28.03.2022 as per the general principle given by the Hon'ble Supreme Court Judgement in *Civil Appeal No. 3533-3544 of 2017 titled as Fortune Infrastructure & Another versus Trevor D'Lima and Others*. Thus, the date of possession for delivery of possession of the Flat comes out to be 28.03.2025.
- VI. That the respondent issued a demand letter dated 20.10.2022 to the complainant and raised an illegal and fraudulent demand of Rs.5,17,660/- towards remaining payment for the flat, including interest for delayed payment at unjustified rate. The respondent had always demanded and collect payments from the complainant without following the payment plan as per the agreement, as the respondent had already collected more than 78% of the total cost of the flat before executing the agreement for sale.
- VII. That the respondent charged illegal and unlawful interest at unjustified rate from the complainant on the ground of delayed payment, whereas the complainant always made payments on time which were more than the amount due as per the agreement, as and when demanded by the respondent for the flat. The complainant objected to unjustified interest being charged by the respondent.
- VIII. In March, 2024, the respondent sent an email dated 27.03.2024 and provided a special offer 'March Bonanza Scheme' wherein 20% waiver in total interest values was offered if the complainant clears all dues by 31.03.2024 or 01.04.2024. The outstanding demand for the flat as calculated by the respondent was





Rs.7,10,158/- and after discount, the respondent issued a revised demand of Rs.6,75,158/- to the complainant via email dated 04.06.2024. The complainant availed the offer and made part payment of Rs.3,00,000/- to the respondent via IMPS on 08.06.2024 for the flat.

- IX. That the respondent accepted the payment and again issued a revised demand of Rs.4,12,024/- to the complainant via email dated 17.06.2024, after the receipt of Rs.3,00,000/-. Thus, the latest revised demand of Rs.4,12,024/- raised by the respondent from the complainant via email dated 17.06.2024 is illegal, unlawful, fraudulent and unjustified as the respondent is charging and demanding unjustified interest when the respondent has already received more than 98% of the total cost of the flat from the complainant till date.
- X. That the complainant, in total, paid a sum of Rs.14,90,000/- till date as and when demanded by the respondent, which is more than 98% of the total consideration of Rs.15,08,285/- of the flat as per the agreement. Further, the complainant is willing to pay all legitimate amount as per the payment schedule given in the agreement. Still the respondent is charging and demanding unjustified interest and is not handing over the possession of the flat to the complainant.
- XI. The complainant approached the respondent company on various occasions and pleaded for demanding payments as per the payment schedule and deliver the possession of his flat. The respondent did not reply to his letters, emails, personal visits, telephone calls, thereby the respondent violated section 19 of the Act, 2016. The respondent is responsible and accountable

the Rules, 2017 for violation or contravention of provisions of the Act and Rules as mentioned therein.

- XV. That in the given premise and circumstances, it is submitted that the respondent/seller/builder/promoter is habitual of making false promises and has deceptive behaviour. The respondent has earned enough monies by duping the innocent complainant and other such buyers through unfair trade practices and deficiencies in services and has caused the complainant enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury. The complainant hereby seeks to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent, which amounts to unfair trade practices, breach of contract and are actionable under the Act, 2016. In the present circumstances, the complainant has been left with no other options but approach and seek justice under the provisions of the Act, 2016.

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

4. The complainant has filed the present compliant for seeking following reliefs:
- i. Direct the respondent to complete the development of the flat along with all facilities and amenities like water, electricity, roads, parks, etc. immediately.
  - ii. Direct the respondent/developer to handover the legal and legitimate possession of the flat No. F-1211 (Type - B, 1 BHK) at 12<sup>th</sup> floor in Tower F measuring carpet area of 369.98 sq. ft. and balcony area of 56.73 sq. ft. in the project 'ROF Ananda' at Sector 95, Gurugram, as the complainant had already paid more than 98% out of the total cost to the respondent as and when demanded, for the said flat till date.
  - iii. Direct the respondent to demand only legitimate payments according to the payment schedule and not to charge any illegal

- and unlawful amount from the complainant which is not part of the agreement for sale dated 28.03.2022.
- iv. Direct the respondent not to charge interest on account of delayed payments from the complainant as no interest is chargeable because the complainant had made all payments on time as and when demanded by the respondent.
  - v. Direct the respondent not to cancel the allotted unit of the complainant, as the complainant has already paid more than 98% of the total cost of the flat till date.
  - vi. Direct the respondent to revoke/cancel/withdraw the latest revised demand of Rs.4,12,024/- raised by the respondent from the complainant via email dated 17.06.2024 as it is illegal, unlawful, fraudulent and unjustified.
  - vii. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention 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 respondent:**
6. The respondent has contested the present complaint on the following grounds:
    - i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. There is no cause of action to file the present complaint and the complainant has no locus standi to file the present complaint. The complainant is estopped from filing the present complaint on account of his own acts, omissions, admissions, delays, laches and acquiescence.
    - ii. That the complainant has not approached this Authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint



has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:-

- iii. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered prestigious projects and in most of these projects large numbers of families have already shifted after having taken possession.
- iv. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow illegally extract benefits from the respondent. Such mala fide tactics of the complainant cannot be allowed to succeed.
- v. That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhorka, Sector 95, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Ananda' from the Director Town and Country Planning, Haryana, Chandigarh (hereinafter referred to as the 'DTCP') vide approval bearing license no. 17 of 2016 dated 25.10.2016 under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976 read with the Affordable Group Housing Policy, 2013 issued by the Government of Haryana vide the Town and Country Planning Department notification dated 19.08.2013 as



amended from time to time (herein after referred to as 'Affordable Scheme Policy').

- vi. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing Memo no.ZP-1133/SD(BS)/2016/26738 dated 07.12.2016 and the environment clearance bearing no. SEIAA/HR/2017/659 dated 09.10.2017 from the State Environment Assessment Authority, Haryana for the project in question. Moreover, the respondent in compliance of all laws including the Act, 2016 has registered the project in question with this Authority and this Authority after scrutiny of all the relevant documents and completing its own due diligence has issued a registration certificate bearing no. 184 of 2017.
- vii. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide his booking application form on 02.02.2022. The complainant agreed to be bound by the terms and conditions of booking application form. The complainant was aware and had admitted and accepted vide the said booking application form that he by the way of said application form had applied in the said project under the Affordable Group Housing Colony being developed by the respondent under the Affordable Scheme Policy and had understood all the limitations and obligations after being provided with all the information and clarifications. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said policy and only after being completely satisfied about the same, had made the booking with

the respondent. Moreover, the complainant had also perused and signed annexure-A of the application form which contained the payment plan which specifically stated the stage of payments.

- viii. That the payment plan of the unit applied for was strictly as per the notified Affordable Scheme Policy, 2013. The relevant clause i.e., 5 (iii)(b) of the said policy is reproduced hereunder:-

*"b. ...Any persons interested to apply for allotment of flat in response to such advertisement by the colonizer may apply on the prescribed application form along with 5% amount of the total cost of the flat. All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The application will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of the flat. The balance 75% amount will be recovered in six equated six monthly installments spread over three year period..."*

- ix. That the complainant was a successful allottee in the subsequent draw of lots and was allotted a unit from the left over units and as per clause 5(iii)(k) of the policy which is reproduced hereunder:-

*"k. in case of re-allotment resulting after surrender of flats as well as allotment of left over flats, the maximum amount recoverable at the time of such allotment shall be equivalent to the amount payable by the other allottees in the project at that stage.*

- x. The complainant was allotted an apartment no. F-1211, 12th floor, in Tower-F having carpet area of 369.98 sq. ft. in the said project. Hence, as per the Affordable Housing Policy, 2013, the complainant was liable to pay the payment demands in consonance and equivalent to the payment demands made with the other allottees of the project who had initially made the booking with the respondent.
- xi. That the respondent completed the construction of the tower in which the unit allotted to the complainant was located and offered the possession to the respondent vide offer of possession



dated 23.02.2022. As per the Affordable Housing Policy, 2013, the due date to hand over the possession of a unit is 4 years from the date of approval of the building plan or the grant of the environment clearance, whichever is later. The said fact was also reproduced eventually in clause 7.1 of the agreement which was executed between the complainant and the respondent. Hence, the due date to hand over the possession of the unit was 09.10.2021. Furthermore, on account of COVID-19 pandemic, the implementation of the project was impacted. This Authority has vide resolutions already have granted a relaxation of six months period to all those projects which were due to be completed between March 2020 and March 2022. Thus, the due date to handover the possession of the unit was 09.04.2022. Hence, the possession was offered by the respondent to the complainant before the lapse of the due date to handover the possession and no default was committed by the respondent.

- xii. The complainant was required as per the said offer of possession to make complete payment towards the due amount as well as to complete the documentation formalities and the respondent accordingly sent a demand letter dated 23.02.2022 requesting the complainant to make payment of Rs.14,89,014/-. The complainant only made part-payment of the said demanded amount and the respondent was constrained to send another demand letter dated 25.02.2022 to the complainant demanding the remaining amount of Rs.8,20,104/- from the complainant.
- xiii. That on the basis of the application, an agreement was sent by the respondent to the complainant. The complainant signed the agreement only after being fully aware of all the limitations and

obligations and after being completely satisfied with the terms and conditions of the said agreement. Thus, the agreement for sale was executed between the parties on 28.03.2022. Subsequently, an allotment letter was issued in favor of complainant confirming the allotment of the said unit to the complainant. The said issuance of allotment letter was a formality which had to be complied with as the essence of the allotment being the unit number and size had already been intimated to the complainant vide the offer of possession letter dated 23.02.2022. That prior to the issuance of the said allotment letter, all the payment demands were being demanded and paid in part by the complainant to the respondent as per the Policy in question and no objection whatsoever were raised by him.

- xiv. That the complainant in continuation of his defaults failed to remit his dues despite several demand letters, reminders through several telephonic conversations by the respondent. The respondent was constrained to send another reminder letter dated 08.11.2023 requesting the complainant to make further payments. That the respondent had vide its offer of possession letter dated 23.02.2022 to the complainant offered the possession of the allotted unit after obtaining the occupation certificate. Furthermore, the respondent was completely willing to handover the actual, physical possession of the said unit to the complainant. However, on account of the defaults committed by the complainant in making the timely payments, the respondent was not in a position to handover the possession of the said unit to the complainant.



- xv. The complainant was aware that as per clause 1.4 and 2.2 and 5.1 of the agreement, timely payment of the installment amount was the essence of the allotment. It was understood vide clauses 11.7 of the booking application form and 1.13 of the agreement and as per clause 5(iii)(i) of the Affordable Scheme Policy, 2013, that if the allottee fails to make the payment towards the demanded amount, then the respondent would be entitled to terminate the allotment by issuing the cancellation letter. On account of defaults committed by the complainant, the respondent was left with no other choice but to terminate the allotment of the complainant by issuing the cancellation letter dated 09.02.2024. Further, requesting the complainant to visit the office of the respondent and collect the balance if any therefrom. Therefore, the complainant was left with no right, title or lien in the unit after the said cancellation. The said cancellation was done by the respondent strictly as per the agreement and the said policy and the same is valid in the eyes of law.
- xvi. That the complainant visited the office of the respondent and requested the respondent to restore the said unit after revoking the cancellation, further assuring the respondent that the complainant would be making the timely payment without any delay or default. The respondent after being duly assured by the representations of the complainant sent an email dated 27.03.2024 and provided a special offer 'March Bonanza Scheme wherein 20% waiver in total interest values was offered if the complainant clears all dues by 31.03.2024 or 01.04.2024 and vide the said email requested the complainant to make the payments as per the aforesaid plan. The respondent vide the said email

demanded an amount of Rs.6,75,158/-. The complainant out of the total demanded amount of Rs.6,75,158/- paid a sum of Rs.3,00,000/ only on 08.06.2024 i.e., 3 months after the email of the respondent. The complainant vide his email dated 08.06.2024 informed the respondent that the complainant was trying to arrange the funds and that on account of his travel plans, he would make the payment in coming days.

- xvii. That the respondent yet again sent a revised demand vide email dated 17.06.2024 and requested the complainant to clear out the remaining dues. However, despite numerous reminders sent by the respondent, the complainant failed to remit the said dues. Not only has the complainant failed to remit the principal amount but also the interest which has been accrued as per the provisions of Affordable Housing Policy, 2013 solely due to the faults and non-payment by the complainant. The relevant provision of law which enables the respondent to charge interest on delayed payment is as follows:-
- xviii. "The balance 75% amount will be recovered in six equated six monthly instalments spread over three-year period, with no interest falling due before the due date for payment. Any default in payment shall invite interest @15% per annum. The project-wise list of allottees shall also be hosted on the website of the Department."
- xix. Furthermore, the unit of the Complainant was already cancelled by the Respondent vide Cancellation letter dated 09.02.2024 and thus, on account of non-payment of the complete payment demand, the termination of the said unit was not revoked by the respondent. That although, moreover, it is pertinent to mention

herein that the respondent has throughout acted strictly as per the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities. No illegality whatsoever has been committed by the respondent in adhering to its contractual and legal duties.

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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

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**

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)(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.I Objection regarding maintainability of complaint on account of complainant being investor.**

10. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and he has paid total price of Rs.14,90,000/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or*

*otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

11. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

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

**G.I. Direct the respondent not to cancel the allotted flat no. F-1211 of the complainant, as the complainant has already paid more than 98% of the total cost of the flat till date.**

12. The complainant was allotted a unit bearing no. F-1211, in 12<sup>th</sup> floor, Tower-F, in the project of respondent "**ROF Ananda**", in Sector 95, Gurugram. A buyer's agreement was executed between the parties on 28.03.2022. As per clause 7.1 of the buyer's agreement, the possession of the unit to be offered within 4 years from approval of building plans (07.12.2016) or the date of environment clearance (09.10.2017) whichever is later. The due date of possession is calculated from the date of environment clearance being later i.e., 09.10.2017 which comes out to be 09.10.2021. The respondent has obtained the occupation certificate from the competent Authority in respect of the said project on 22.02.2022. The complainant had paid Rs.14,90,000/- out of total sale consideration of Rs.15,08,285/-. The respondent has filed an application for dismissal of complaint that the unit of the complainant was cancelled on 09.02.2024, due to non-payment. The said application was disposed of vide order dated 22.01.2025, and it was



held that *the complaint is held to be maintainable. The complainant is aggrieved by cancellation/alleged unjust demands made by the respondent w.r.t. an allotted unit in an Affordable Housing Project.* Further, during proceeding dated 04.02.2025, the counsel for the respondent stated that the respondent is exploring amicable settlement including handing over the possession of the unit after its completion.

13. Consequently, based on this assessment, the Authority concludes that the legal status of the unit remains unchanged, and no transfer of ownership or rights has been taken place. Further, the respondent company has also showed its interest to set aside the termination letter and to restore the unit to the complainant as the complainant has paid 98.78% of the sale consideration. In view of the same, the cancellation letter dated 09.02.2024, is hereby set aside.

**G.II Direct the respondent to complete the development of the flat along with all facilities and amenities like water, electricity, roads, parks, etc. immediately.**

**G.III Direct the respondent/developer to handover the legal and legitimate possession of the flat No. F-1211 (Type - B, 1 BHK) at 12<sup>th</sup> floor in Tower F measuring carpet area of 369.98 sq. ft. and balcony area of 56.73 sq. ft. in the project 'ROF Ananda' at Sector 95, Gurugram, as the complainant had already paid more than 98% out of the total cost to the respondent as and when demanded, for the said flat till date.**

14. On the documents and submissions made by both the parties, the Authority observes that the respondent has completed the construction of the unit and obtained the occupation certificate on 22.02.2022 from the competent authority. The buyer's agreement was executed between the parties herein on 28.03.2022, after obtaining occupation certificate. It implies that a ready to move-in property was offered to the complainant and who was aware about the fact that the construction of the tower where the subject unit is situated has already been completed. In the present case, the complainant intends

to continue with the project and seeking direction for handover he possession of the unit.

15. After consideration of the facts and circumstances, the authority is of view that as per section 19(6) and 19(7) of the Act every allottee is required to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments and to take physical possession of the apartment as per section 19(10) of the Act. In view of the same, complainant/allottees shall make the requisite payments as per the provisions of sections 19(6) and (7) of the Act, 2016 and to take physical possession of the subject unit within two months from the date of this order as the OC in respect of the said project has already been obtained by it from the competent authority. Further, the complainant is directed to execute the conveyance deed upon payment of requisite stamp duty by them as per norms of the state government as per section 17 of the Act as per their obligation under section 19(11) of the Act with 3 months from the date of this order.

**G.IV Direct the respondent to demand only legitimate payments according to the payment schedule and not to charge any illegal and unlawful amount from the complainant which is not part of the agreement for sale dated 28.03.2022.**

**G.V Direct the respondent not to charge interest on account of delayed payments from the complainant as no interest is chargeable because the complainant had made all payments on time as and when demanded by the respondent**

**G.VI Direct the respondent to revoke/cancel/withdraw the latest revised demand of Rs.4,12,024/- raised by the respondent from the complainant via email dated 17.06.2024 as it is illegal, unlawful, fraudulent and unjustified.**

16. In the above mentioned reliefs, the complainant has sought that the respondent be restrained and direct it not to charge any illegal and unlawful amount from the complainant which is not part of the agreement for sale, not to charge any delay payment interest, and to withdraw the latest revised demand of Rs.4,12,024/- raised by the

respondent from the complainant via email dated 17.06.2024 as it is illegal, unlawful, fraudulent and unjustified.

17. The 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—*

*(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;"*

18. As per clause 2(za) of the Act, 2016, the Authority is of the view that the respondent can charge interest on the delay payments /maintenance dues from the complainant at the prescribed rate i.e., 11.10% which is the same as is being granted to the complainant in case of delayed possession charges.
19. Further, here the complainant has stated that the respondent should be restrained from charging any payment that is not part of the agreement for sale dated 28.03.2022. The Authority is of the view that the respondent/promoter shall not charge anything from the complainant which is not the part of the buyer's agreement as well as the Affordable Housing Policy, 2013.
20. The complainant has sought the relief regarding revoking/cancelling /withdrawing the demand of Rs.4,12,024/- raised by the respondent

from the complainant vide email dated 17.06.2024. The Authority observes that the said email is annexed at page no. page no. 113 of the reply and the contents of the email are as follows:

**"CASH PAYMENT SHALL NOT BE ACCEPTED**

(+) Demand letter = Rs.4,12,025/-

Please below account details to pay for demand letter amount:-

RTGS Details:

Company Name- Chirag Builtec Private Limited.

A/c No- 12371131003952

IFSC Code:- PUNB0098710

Bank Name:- Punjab National Bank

You are requested to kindly clear the dues and share the payment details.

Thanks for your understanding, support and corporation.

Thanks and Regards

Team Ananda

21. The Authority is of the view that the email dated 17.06.2024 wherein the demand of Rs.4,12,024/- has been raised by the respondent is apparently vague as the respondent failed to mention as on which account the said demand is made and in the absence of any particular, the complainant cannot be expected to make the payment.

**G.VII Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant for filing and pursuing the instant case.**

22. The complainant in the aforesaid relief is seeking relief w.r.t compensation *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

**G. Directions of the Authority:**

23. 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) of the Act.
- i. The cancellation letter dated 09.02.2024, is hereby set aside. The respondent is directed to issue a fresh statement of account within a period of one month from the date of this order.
  - ii. The complainant is directed to pay outstanding dues, if any within 30 days after receipt of the revised statement of account and the respondent shall handover the physical possession in next 30 days to the complainant/allottee.
  - iii. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
  - iv. The rate of interest chargeable from the allottee by the promoter, in case of default in making payment 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 as per section 2(za) of the Act.
  - v. The respondent/promoter shall not charge anything from the complainant which is not the part of the buyer' agreement as well as the Affordable Housing Policy, 2013. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme

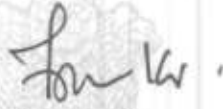


Court in Civil appeal nos. 3864-3889/2020 decided on  
14.12.2020.

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

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.04.2025

