

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

Complaint no.: 2908 of 2024
Date of complaint: 28.06.2024
Date of order: 16.05.2025

Sonia Sareen

R/o: H.No.32A, Empire Estate, M.G. Road,
Sultanpur, South Delhi, Delhi-110030

Complainant

Versus

M/s Sepset Properties Pvt. Ltd.

Regd. Office: Room no. 205,
Welcome Plaza, S-551, School Block II,
Shakarpur, Delhi-110092

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Pranav Verma (Advocate)
Shri Himanshu Singh (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 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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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 of the project	"Paras Dews", Sector- 106, Gurugram
2.	Area of the project	13.762 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide no. 118 of 2017 dated 28.08.2017
	Registration valid up to	31.01.2022 Note: 31.07.2021 + 6 months on account of COVID
	Registration extension no.	05 of 2022 dated 18.10.2022
	Extension valid up to	31.01.2023
5.	DTPC License no.	61 of 2012 dated 13.06.2012
	Validity status	12.06.2025
	Licensed area	13.76 acres
6.	Allotment letter dated	10.01.2013 [Page 18 of complaint]
7.	Unit no.	03, 4 th floor, Tower B [Page 27 of complaint]
8.	Unit measuring	1760 sq. ft. [Page 27 of complaint]
9.	Date of execution of Floor buyer's agreement	04.04.2013 [Page 20 of complaint]
10.	Possession clause	3. Possession <i>"3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in</i>

		<p>default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser....."</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>[Page 32 of complaint]</p>
11.	Environment clearance	06.09.2013 [Page 58 of reply]
12.	Due date of possession	06.09.2017 [Calculated from the date environmental clearance being later and grace period of six months is included]
13.	Basic Sale Price	Rs. 96,80,000/- [Page 53 of complaint]
14.	Total sale consideration	Rs.1,12,71,200/- [Page 53 of complaint]
15.	Total amount paid by the complainant	Rs.1,23,40,553/- [As per SOA dated 05.10.2021 on page 64 of complaint]
16.	Occupation certificate in respect of tower 'B' dated	15.01.2019 [Page 69 of reply]
17.	Offer of possession	24.01.2019 [Page 81 of complaint]
18.	Conveyance deed dated	29.10.2021 [Page 76 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. That the complainant by relying on the respondent builder's strong reputation in the market and through the widely spread and aggressive advertising of the respondent, the complainant, applied to book a residential unit in the respondents esteemed project vide its Application dated 29.12.2012. The complainant was allotted a residential unit bearing no. 03, 4th floor, Tower B, in the said project, having super area of 1760 sq. ft. The basic sale price of the said residential unit was Rs. 96,80,000 /-. The Allotment Letter was issued by the respondent on 10.01.2013 acknowledging the same with Construction Linked payment plan. The complainant and the respondent entered into a builders' buyer agreement on 04.04.2013.
- ii. That the respondent has charged the complainant at super area of the said unit, whereas as per the Rules and guidelines laid down by the RERA, the builder shall only charge the allottee, on the Carpet Area of the unit and not on the basis of the super area of the unit. Further, it is pertinent to note that the respondent builder in the Builder Buyers Agreement dated 04.04.2013, has charged complainant with illegal and arbitrary charges such as the EDC @Rs. 361 per sq fts., IDC@Rs. 34/- per Sq. Fts., Club Membership at the rate of Rs. 2,00,000 /-, IFMS @ Rs, 125/- per Sq. Fts., PLC@ Rs. 100/- per Sq Fts., and Car Parking charges @ Rs. 3,00,000/- per car parking slot. That all these charges as mentioned by the respondent in the Builder Buyers Agreement are illegal, unlawful, and arbitrary. That all the charges as mentioned above are against the law, and have been charged illegally by the respondent builder to exploit the complainant.

- iii. That as per the Builder Buyer Agreement as entered between the parties, the respondent builder had to provide the possession of the said project to the complainant, within 42(Forty-Two) with an additional grace period of 6 (six) months, from the date of execution of the builder buyers agreement or date of obtaining all licenses or approvals for commencement of construction whichever is later. Thus, the due date of possession comes out to be 04.04.2017.
- iv. That the Respondent had shamelessly failed to offer the possession of the said unit on time as per the terms and conditions agreed between the parties. Further, the respondent did not compensate the complainant as per the agreed terms under the BBA.
- v. That the complainant entered into a Tripartite Agreement dated 10.09.2014 with Vijaya Bank and the Respondent to obtain a Home Loan for the said unit. That the complainant obtained a Home loan of Rs. 50,00,000 /- from Vijaya Bank, to pay for the said unit.
- vi. That the complainant in this period made various payments to the respondent, as a consideration of the said unit, as per the payment plan of the complainant which was a Construction Linked payment plan. That during this period the complainant paid an amount of Rs. 1,23,40,553/- in favour of the respondent.
- vii. That the respondent builder as per the knowledge of the complainant, obtained the occupation certificate in respect of the said unit, and tower on 15.01.2019, and thereafter, the respondent/builder offered the possession of the said unit to the complainant on 24.01.2019. Further, it is of utmost importance that, the offer of possession as issued by the respondent was a false, fake and illegal offer of possession, as the unit of the complainant, was not finalized and major deliverables were pending in the unit of the complainant, and thus the complainant refused to take

possession of the said unit until the deliverables were delivered by the respondent in the said unit and the said unit was ready for possession. Thereafter, the respondent in order to harass the complainant, issued various follow up letters, demanding the complainant to make the due payment and take the possession of the said unit, by executing a conveyance deed.

- viii. That the respondent thereafter, completed the said unit, in the year 2021, and delivered, the unit for possession to the complainant, whereas subsequently the complainant made the due payment to the respondent, and executed the conveyance deed in its favour on 29.10.2021.
- ix. That further after clearing all the dues and illegal charges as levied by the respondent builder, the complainant took the possession of the said unit, under duress and in protest, in order to enjoy the benefits of the owning a residential unit. That the respondent builder even after a delay of almost 2 years in offering the possession of the said unit, the respondent builder did not provide any compensation in terms of monetary reliefs or benefits and as per the terms of the BBA, to the complainant, instead the respondent builder has levied illegal and arbitrary charges upon the complainant, which the complainant had to bear, simply to get the conveyance deed registered in its favour from the builder.
- x. That the complainant has complied with all the terms and conditions of the various documents executed but the respondents have failed to meet up with their part of the contractual obligations and thus are liable for DPC and interest for every month of delay at prevailing rate of interest from the due date of possession till valid offer of possession and physical possession. But till date no amount has been paid back to the complainant and the respondents have enjoying the hard-earned money of the complainant for years approximately. ✓

- xi. That the complainant has suffered great losses in terms of loss of rental income, opportunity to own and enjoy a property in Gurugram, as majority of their life's hard-earned money is stuck in this project. The respondent is liable to compensate the complainant for its above acts and deeds causing loss of time, opportunity, and resources of the complainant. Thus, due to such hardship faced by the complainant by the act and misconduct of the respondent, the complainant is also reserving their rights to be adequately compensated by the learned Adjudicating officer.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to pay delay possession charges for every month of delay @18% p.a. from the due date of possession till the actual handing over of the complete and valid possession by the respondent, on the amount paid by the complainant i.e., Rs. 1,23,40,553 /-.
 - ii. Direct the respondent to waive off the arbitrarily and illegally levied interest and delayed payment charges, Holding charges, unlawful charges including IFMS, Car Parking Charges EDC, PLC, IFMS Club Membership Charges, labour cess, extra amount of vat/GST etc (if any).
 - iii. Direct the respondents to charge on the carpet Area and to provide a detailed break-up of super area and common area applicable and allotted to the complainant.
 - iv. Direct the respondent to pay litigation cost.
 - v. Direct the respondents to bear the excess amount of interest that was paid by the complainant due to the delay in the offer of possession by the respondent.
 - vi. Any other relief as the Hon'ble Authority may deem fit.

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: -
- i. That the complaint is not maintainable and is premature since the project is RERA registered having registration no. 118 of 22017 dated 28.08.2017 and in terms of the registration certificate the due date of completion is 31.07.2021 and further 6 months grace period as per notification no.9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020 which has not arisen in the present case. Further, the present complaint is also infructuous as the respondent had already obtained the occupancy certificate for tower A to D of the project on 15.01.2019 where the unit of complainant is situated.
 - ii. That there is no delay on part of the respondent since it is admittedly the complainant who has defaulted in payment of instalments as per the agreed payment plan.
 - iii. That in terms of the buyer's agreement dated 04.04.2013, the complainant was allotted unit bearing no. 03, 4th floor, in tower B having super area admeasuring 1760 sq. ft., for a total sale consideration of Rs.1,20,77,136/-. The complainant has opted for construction linked payment plan.
 - iv. That the possession of the subject unit was to be handed over to the complainant in terms of clauses 3.1 and 3.2 of the builder buyer agreement dated 04.04.2013 which clearly provide that subject to the complainant complying with all the terms of the builder buyer agreement and making timely payments of the instalments as and when they fall due. The respondent proposed to offer the possession of the unit within a period of 51 months (42 month + grace period of 6 month plus 90 days) of the date, ✓

of execution of the apartment buyer's agreement or date of obtaining all licences or approvals for commencement of construction, whichever is later, subject to force majeure. Moreover, all the approvals for commencement of the construction work were received towards the end of 2013 and construction work commenced in January 2014.

- v. That the present complaint is not maintainable since not only the complainant is in breach of the builder buyer agreement, and also in violation of Real Estate Regulation Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 has filed this complaint. Section 19 lays down the rights and duties of the allottees and sub-clause (6) of Section 19 provides that the allottee shall be responsible to make payments in the manner and as per the time specified in the agreement between the parties. The complainant has breached all these provisions by making a huge delay in making the payments as per the time specified in the agreement.
- vi. That as per section 19(10) of the Act, the respondent has obtained the occupation certificate on 15.01.2019 and has further offered the possession vide letter dated 24.01.2019. Thereafter, the allottee is duty bound to take possession. Herein, the complainant has failed to take possession of the allotted unit as well as making the payment of outstanding dues. Further, the respondent has already executed the conveyance deed on 29.10.2021 in favour of the complainant. It is further submitted that after executing the conveyance deed, all claims/damages and other consequences are deemed to be settled in lieu of conveyance deed.
- vii. That the Hon'ble Supreme Court, through an order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi-NCR region, affecting the respondent's project which led to a significant reduction in ✓

construction activity for a considerable period. Similar stay orders were also issued in the preceding years, 2017-2018 and 2018-2019, resulting in long-term halts in construction activities. The pandemic of Covid-19 also had devastating effect on the worldwide economy, particularly on the industrial sector, including the real estate sector, which is heavily dependent on its labour force. Government-imposed lockdowns resulted in a complete stoppage of all construction activities in the NCR area until July 2020. The labour force employed by the respondent was forced to return to their hometowns, leading to a severe shortage of labour. The respondent has been unable to employ the necessary labour for the completion of the project.

viii. That unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent were forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects.

ix. That once the parties have duly contracted and locked their legal obligations by way of the buyer's agreement, no relief over and above the clause of the agreement can be granted to the complainant. The buyer's agreement duly provides that for any period of delay beyond the contracted date of offer of possession, subject to force majeure clause.

x. That in the present complaint the complainant has not been able to point out a single provision of either the Real Estate (Regulation and Development) Act, 2016 or the Haryana Real Estate (Regulation and Development) Rules, 2017 which has been violated by the Respondent. Thus, this complaint is not entitled to any relief at all.

7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. 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

11. 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) 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.

12. 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 the objections raised by the respondent

F.I Objection regarding the force majeure.

13. The respondent-promoter raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 04.04.2013 and as per the terms and conditions of the said agreement, the due date of handing over of possession comes 06.09.2017 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

14. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. In the present complaint, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 06.09.2017. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding delay in payments by the complainant.

16. The respondent-promoter contended that the complainant had delayed making payments as per the timeline specified in the agreement. In this regard, Section 19(6) of the Act, 2016, imposes an obligation on the allottee to make timely payments. In the event of default by the allottees, the promoter is entitled to charge interest at the prescribed rate of 11.10%. 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(za) of the Act.

G. Relief sought by the complainant

G.I Direct the respondent to pay delay possession charges for every month of delay @18% p.a. from the due date of possession till the actual handing over of the complete and valid possession by the respondent, on the amount paid by the complainant i.e., Rs. 1,23,40,553 /-.

17. That an allotment letter dated 10.01.2013 was issued in favour of the complainant for the unit no. 03, 4th floor, tower-B. Thereafter, a builder buyer agreement dated 04.04.2013 was executed between the respondent and complainant for the subject unit for an agreed basic sale consideration of Rs.96,80,000/- against which complainant has paid an amount of Rs.1,23,40,553/- and the respondent has failed to hand over the physical possession within stipulated time. The complainant intends to continue with the project and is seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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)

18. Clause 3.1 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

"3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/ authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the

Apartment to the Purchaser(s) within a period of 42 (Forty-Two) months with an additional grace period of 6 (six) Months from the date of execution of this Agreement or date of obtaining all licenses or approvals for commencement of construction, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 90 (ninety) business days, after the expiry of grace period, for offer to hand over the possession of the Apartment to the Purchaser....."

(Emphasis supplied)

19. Admissibility of delay possession charges at prescribed rate of interest:-

The complainant is seeking delay possession charges however, 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, *ibid*. Rule 15 is 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."

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

21. 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., 16.05.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

22. 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—

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

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

23. 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 them in case of delayed possession charges.
24. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (04.04.2013) or date of obtaining all license or approvals for commencement of construction, whichever is later. The builder buyer agreement was executed between the parties on 04.04.2013 whereas the environmental clearance certificate was obtained by the respondent on 06.09.2013. Therefore, the date of environmental clearance being later, the due date of possession was calculated from the date of environmental clearance. Accordingly, the due date of possession comes out to be 06.09.2017. Occupation certificate was granted by the concerned

authority on 15.01.2019 and thereafter, the possession of the subject unit was offered to the complainant on 24.01.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.04.2013 to hand over the possession within the stipulated period.

25. Section 19(10) of the Act obligates the allottees 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 15.01.2019. The respondent offered the possession of the unit in question to the complainant only on 24.01.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has 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 i.e., 06.09.2017 till the expiry of 2 months from the date of offer of possession plus two months or actual handing over of possession, whichever is earlier.
26. 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 the respondent is established. As such, the complainant-allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 06.09.2017✓

till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondent to waive off the arbitrarily and illegally levied interest and delayed payment charges, Holding charges, unlawful charges including IFMS, Car Parking Charges EDC, PLC, IFMS Club Membership Charges, labour cess, extra amount of vat/GST etc (if any).

G.III Direct the respondents to charge on the carpet Area and to provide a detailed break-up of super area and common area applicable and allotted to the complainant.

27. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
28. In the above-mentioned relief sought by the complainant the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except for the statutory rights under the Act of 2016. The complainant could have asked for the claim before the conveyance deed got executed between the parties.
29. Moreover, the clause 4 of the conveyance deed dated 29.10.2021 is also relevant and reproduced hereunder for ready reference:

"4. ... The Vendee assures the Vendor that he/she/they/it shall not raise any objection or make any claim against the vendor in respect of any item of work which may be alleged to have been and/ or not have been carried out or completed and /or for any other reason whatsoever and such claim and / or objection, if any, shall be deemed to have been waived by the vendee."

30. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

G.IV Direct the respondent to pay litigation cost.

G.V Direct the respondents to bear the excess amount of interest that was paid by the complainant due to the delay in the offer of possession by the respondent

31. The complainant is also seeking relief w.r.t compensation and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation under sections 12,14,18 and section 19 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the Authority

32. 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 interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the due date of possession, i.e., 06.09.2017 till the date of offer of possession (24.01.2019) plus two months i.e., 24.03.2019, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- ii. The rate of interest chargeable from the allottees 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

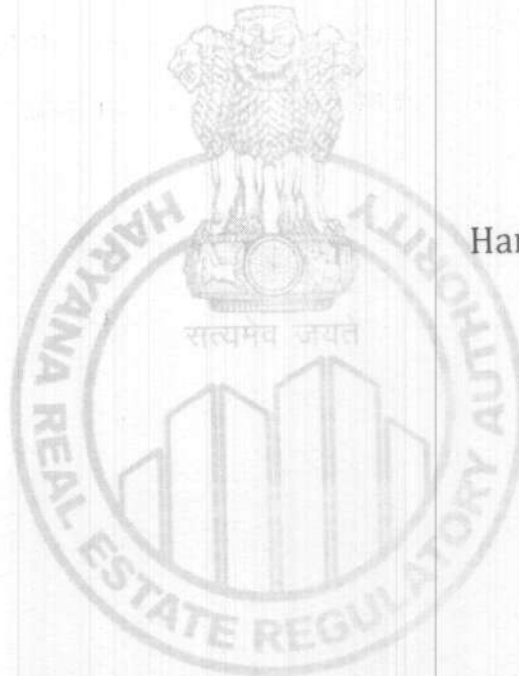
promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

33. Complaint stands disposed of.

34. File be consigned to registry.

Dated: 16.05.2025



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM