



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1769 of 2023
Date of filing:	16.08.2023
First date of hearing:	14.09.2023
Date of decision:	26.05.2025

Urvashi Kaushik Patel
W/o Sh. Kaushik Kumar Mafatlal Patel,
R/o Flat no. 1108, Tower- T8,
RPS Savana, Sector-88,
Faridabad-121002

Sh. Kaushik Kumar Mafatlal Patel
S/o Sh. Mafatlal Patel
R/o Flat no. 1108, Tower- T8,
RPS Savana, Sector-88,
Faridabad-121002

....COMPLAINANTS

VERSUS

M/s BPTP Limited
Registered office- Plot no. 28, ECE House,
K.G. Marg, Connaught Circus,
New Delhi- 110001

....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Urvashi Kaushik Patel, complainant herself and on behalf of co-allottee through VC
Adv. Hemant Saini, Adv. Himanshu Monga, Adv. Neha, Counsels for the respondent.

ORDER:(NADIM AKHTAR –MEMBER)

1. Facts of the present complaint are that the complainants Mrs. Urvashi Kaushik Patel and Co-Owner Shri Kaushik Kumar Mafatlal Patel approached the respondent through the broker "*Sales Direct*" and expressed their desire to purchase a unit in the respondent's residential project "Park 81" located in Sector-81, Parklands, Faridabad, Haryana. The complainants opted for a Construction Linked Payment Plan for Unit No. VL1-17-FF, admeasuring approximately 1,402 sq. ft. super built-up area on a plot size of 275 sq. yds. Copy of booking form dated 20.09.2009 and Payment Receipt of ₹3,00,000/- dated 26.09.2009 are annexed as Annexure C/1.
2. That following the booking, the respondent issued a demand letter dated 21.12.2009 for an amount of ₹3,00,000/-, payable before 05.01.2010. The complainants paid the demanded amount on 26.12.2009 and availed the Timely Payment Discount (TPD).
3. That thereafter, Allotment Letter dated 16.03.2010 was issued by the respondent, confirming the allotment of Unit No. VL1-17-FF, along with a demand of ₹3,35,335/-, payable by or before 31.03.2010. The complainants duly paid this amount and availed the TPD. Allotment Letter dated



16.03.2010, Demand Letter, and Payment Receipt dated 25.03.2010 are annexed as Annexure C/2 (Colly).

4. That subsequently, a demand letter dated 14.02.2012 was issued for "At the start of Construction" demanding ₹3,36,849.07, which the complainants paid on 23.02.2012. Demand Letter dated 14.02.2012 and Receipt dated 23.02.2012 are annexed as Annexure C/3 (Colly).
5. That the Builder Buyer Agreement (BBA) was executed between the parties on 12.04.2012, and the complainants have abided by all the terms therein. Copy of Builder Buyer Agreement dated 12.04.2012 is annexed as Annexure C/4.
6. That the respondent raised a demand letter dated 17.05.2012 towards EEDC (External Electrification and Development Charges), which the complainants paid on 04.06.2012, acknowledged by the respondent through Receipt dated 04.06.2012. Demand letter and Payment Receipt for EEDC are annexed as Annexure C/5 (Colly)
7. That demand letters were further raised by the respondent at various stages of construction and all amounts were paid by the complainants within the stipulated time as under:
 - a. Demand letter dated 06.09.2013 for "Casting of Ground Floor Slab" – Paid on 20.09.2013 [Annexure C/6]



- b. Demand letter dated 07.11.2013 for “Casting of First Floor Slab” – Paid in two tranches on 09.11.2013 and 16.11.2013. [Annexure C/7]
 - c. Demand letter dated 31.12.2013 for “Casting of Second Floor Slab” – Paid on 04.01.2014 [Annexure C/8]
 - d. Demand letter dated 30.01.2014 for “Start of Brickwork” – Paid on 11.02.2014
[Annexure C/9]
8. That in response to the Government Notification dated 12.09.2016, the respondent raised an additional VAT demand of ₹28,341/- on 10.11.2016, which the complainants duly paid on 22.11.2016. VAT Demand Letter and Receipt dated 22.11.2016 are annexed as Annexure C/10 (Colly).
9. That the complainants noticed an error in their records and accordingly sent an email to the respondent on 22.07.2023. The Respondent confirmed the correction via return email dated 24.07.2023. Email correspondence is annexed as Annexure C/11.
10. That the complainants have till date paid a sum of ₹27,80,736.34/- as per the account statement dated 25.07.2023 issued by the respondent. Account Statement dated 25.07.2023 is annexed as Annexure C/12.
11. That although Clause 5.5 of the BBA stipulates a possession timeline of 42 months from the date of execution (i.e., by 11.10.2015), however, the unit has



not been completed till date. The respondent has failed to provide any habitable infrastructure. The unit lacks motorable road access, Internal roads, street lights, horticulture, parks, Basic unit-level amenities like flooring, paint, electrical wiring, toilet fittings, and kitchen installations.

12. That the complainants, having fulfilled 99% of the payment obligations timely, continue to live on rent since 2009 and have been following up for possession. Despite paying the majority of dues, possession has not been offered. That as per Clause 5.5 of the BBA, in case of delay in offering possession beyond the stipulated timeline, the respondent is liable to pay delay compensation @ ₹5/- per sq. ft. per month on the super built-up area.
13. That in addition to this contractual compensation, the complainants are also entitled to compensation under Rule 15 of the Haryana RERA Rules, 2017 i.e., SBI MCLR + 2% (currently 9.30%), on the total amount paid, from the due date till actual possession.
14. Further, Complainants have filed applications dated 19.02.2024 and 10.01.2025 in the registry in support of their pleadings. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.



A. RELIEFS SOUGHT

15. That the complainants seek following reliefs and prayed for issuance of directions to the respondent:-

- a. Direct the respondent to pay complainant the delay compensation charges w.e.f from 11.10.2015 as per prevailing Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR +2% (9.30%) HRERA regulations.
- b. The respondent to complete pending work, handover the floor and execute the conveyance deed in favour by the complainant at earliest.
- c. Direct the respondent to pay the complainant Rs 8,00,000/- (Rupees Eight Lac Only) for mental agony/harassment and for deficiency of service and Rs 50,000/- (Rupees Fifty Thousand only) towards cost of legal expenses; and
- d. Pass any other order(s)/ Direction(s) that this Hon'ble Court may deem fit and proper in the present facts and circumstances.

B. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondent submitted a detailed reply on 02.02.2024 in the registry of the Authority and pleading therein as under:-

16. The respondent submits that the present complaint is not maintainable and is liable to be dismissed on following grounds:



- a. The complainants fails to consider that the binding contractual obligations between the parties flow from the Floor Buyer's Agreement (FBA) executed on 12.04.2012—prior to the commencement of the Real Estate (Regulation and Development) Act, 2016 ("RERA"). The rights and liabilities of the parties are governed by this agreement and cannot be reopened under the provisions of the RERA Act.
 - b. The Complainants also executed an Undertaking and Affidavit on 21.04.2012 acknowledging that the layout plan and super built-up area of the unit were tentative and subject to change. They agreed to accept any change in the layout/super area and confirmed their acceptance of alternate unit configurations, if needed. Copy of Undertaking-cum-Affidavit dated 21.04.2012 is annexed as Annexure R-4.
17. The complainants approached the respondent through broker "Sales Direct" for booking a unit in the residential project "Independent Floors – Park 81" situated at Sector 81, Faridabad, Haryana. After conducting independent due diligence and satisfaction, the complainants booked Unit No. VL1-17-FF (tentative super built-up area of 1,402 sq. ft.) on 20.09.2009. Copy of Booking Form dated 20.09.2009 is annexed as Annexure R-1. Thereafter, the



Respondent issued an allotment letter dated 16.03.2010 for the said unit. Copies of Allotment Letter dated 16.03.2010 is annexed as Annexure R-2.

18. A Floor Buyer's Agreement dated 12.04.2012 was thereafter voluntarily and consciously executed between the parties and the terms of the same are binding. Copy of Floor Buyer's Agreement dated 12.04.2012 is annexed as Annexure R-3. In compliance with the Construction Linked Payment Plan, the complainants have made timely payments and availed Timely Payment Discount of ₹1,05,245.6/-. All corresponding demand letters, receipts, and reminders are placed on record. Copies of Payment Request Letters, Receipts, and Reminders are annexed as Annexure R-5 (Colly).
19. That Clause 5.1 and 5.7 of the FBA stipulate that possession was to be offered within 36 months from the date of execution of the FBA or sanction of building plans (whichever is later), with a further grace period of 180 days. The timelines are further subject to events of force majeure and compliance by the complainants. The complainants have failed to appreciate that building plans were applied for on 20.01.2014 but have not been approved till date due to circumstances beyond the control of the respondent. Consequently, the timeline for offering possession has not yet commenced and hence, no delay can be attributed to the respondent. The complaint is, therefore, premature and liable to be dismissed.



20. The construction of the project has been hindered due to several genuine force majeure events, which are protected under Clause 14 of the FBA. These include:
- a. Restrictions on mining activities following the Hon'ble Supreme Court's decision in *Deepak Kumar v. State of Haryana* [(2012) 4 SCC 629].
 - b. Orders of the Hon'ble National Green Tribunal (e.g., O.A. No. 171/2013 dated 02.11.2015) and Hon'ble Punjab & Haryana High Court staying mining operations and regulating construction activities.
 - c. Non-availability and escalated costs of key raw materials like sand, gravel, and bricks.
 - d. Restrictions imposed due to the Covid-19 pandemic during 2020-2021 including full lockdowns and curfews in the State of Haryana, which stalled construction for extended periods (including 12.04.2021 to 24.07.2021).
21. That a period of approximately 349 days was lost on account of these force majeure events. Despite these setbacks, the respondent continued to work on the project, without shifting any financial burden to the complainants.
22. The respondent applied for the Occupation Certificate (OC) on 12.10.2021, and the same was granted by the competent authority on 15.12.2023. Copy of



Occupation Certificate dated 15.12.2023 is annexed as Annexure R-6. Accordingly, the complainants have been offered possession of the unit. If however, the complainants are unwilling to take possession, the respondent is ready to refund the entire amount paid by them, strictly in terms of the FBA, and without any claim of delay compensation.

23. The Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. v. State of U.P.* [Civil Appeal No. 6745-6749 of 2021] held that delay compensation under Section 18 of the RERA Act is available only where the builder fails to deliver possession within the stipulated time under the agreement and not otherwise. In the present case, no such default can be attributed to the Respondent.
24. Respondent has filed applications dated 22.04.2025 and 30.01.2025 in the registry in support of his pleadings. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

C. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

25. The complainants have reiterated the basic facts of the case and submitted that the principal grievance pertains to the inaccessibility of the allotted unit due to legal hindrance. While there may not be a physical obstruction on the road



leading to the unit, the complainants contend that there exists a legal impediment in the form of a *stay order* passed by a competent court, which restricts construction over the access road. The complainants assert that such a legal obstruction adversely affects ingress and egress to the unit, thereby rendering the unit inaccessible in practical terms and constituting a valid ground for claiming delay compensation.

26. In response, the learned counsel for the respondent submitted that, pursuant to the directions issued by this Hon'ble Authority vide order dated 07.04.2025, a Local Commissioner (LC) was appointed to inspect the site and report on the following two issues:

- Whether the unit is complete and habitable;
- Whether there exists unhindered access to the unit via road.

27. He submitted that the LC's report confirms that the unit is complete and fit for habitation, and that photographs evidencing the same have been annexed to the report. However, with respect to road accessibility, it was pointed out that the LC did not annex any photographs but merely recorded that a dispute involving a cultivated portion of land is sub judice before the Hon'ble Punjab & Haryana High Court. The complainants have also filed an order dated 15.12.2023 passed by the Civil Judge, Faridabad, to prove the hindrance on access road but has failed to produce any photographic or physical proof to substantiate the alleged road obstruction.



28. The learned counsel for the respondent emphasized that the Local Commissioner's jurisdiction is limited under Order XXVI Rules 9 and 10 of the Code of Civil Procedure, 1908, and that the LC is not empowered to provide legal opinions or conclusions. His role is confined to recording physical facts on the ground, not determining legal rights or implications. Moreover, it was submitted that several other allottees in the project have already taken possession and are residing in their respective units, and that conveyance deeds have also been executed, thereby proving that the project is functional and operational.
29. Ld. counsel for respondent further relied on Clause 6.1 of the Floor Buyer's Agreement, which stipulates that in the event of restraints or restrictions imposed by any court or authority, the Seller/Confirming Party shall not be held liable for delay in possession. In such a scenario, the complainants have the option to terminate the agreement and seek a refund, as per the following extract of Clause 6.1:

"6.1 Subject to terms & Conditions mentioned in this agreement specifically in Clause no 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities, the Seller/Confirming Party is unable to or fails to deliver possession of the Floor to the Purchaser(s) within 42 months from the date of sanction of the building plan or execution of the Floor Buyer's Agreement, whichever is later, as envisaged under this Agreement, then in such case, the Purchasers) shall be entitled to give notice to



the Seller/Confirming Party, within 90 (ninety) days from the expiry of the said period of 42 months for terminating this Agreement. In that event, the Seller/Confirming Party shall be at liberty to sell and/or dispose of the Floor to any other party at such price and upon such terms and conditions as the Seller/Confirming Party may deem fit without accounting to the Purchasers) for the sale proceeds thereof. Thereafter, the Seller/Confirming Party shall, after sale of the Floor, within (120) one hundred and twenty days from the date of full realisation of the sale price, refund to the Purchaser(s), without any interest, the balance of the amounts paid by him in respect of the Floor, without deduction of Earnest Money but after deduction of any interest paid, due or payable, and any other amount of a non-refundable nature including brokerage paid by the Seller/Confirming Party to the broker, in case the booking is done through a broker..”

It was accordingly submitted that if the complainants are dissatisfied with the possession offered, respondent is ready and willing to refund the entire amount received, in accordance with the terms of the agreement.

30. He also reiterated that the Occupation Certificate dated 15.12.2023 (annexed at Page 107 of the Reply) and the Offer of Possession dated 20.07.2024 (annexed at Page 6 of Application dated 30.01.2025) were duly issued and communicated to the complainants. Further, a reminder email dated 30.01.2025, requesting the complainants to take possession, has been placed on record as Annexure R-8 of the Application dated 31.01.2025.
31. It was further pointed out by the Id. counsel for respondent that respondent has already paid a sum of ₹14,25,410/- towards delay interest compensation, as recorded in the order dated 07.04.2025 passed by this Hon'ble Authority.



In addition, he relied on the Affidavit dated 31.01.2025 and photographs placed at Pages 30 to 34 of the Application dated 31.01.2025, to assert that the access road to the unit is clear and functional. The Statement of Accounts filed by the respondent also details all receivables and payables which clearly establish that respondent has fulfilled all its contractual obligations. Therefore, the respondent contended that the present complaint is repetitive, lacks merit and is liable to be dismissed.

D. ISSUES FOR ADJUDICATION

32. Whether the reliefs sought can be granted to the complainants?

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

33. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a floor in the real estate project; "Park-81, Parklands, Sector 81, Faridabad, Haryana" being developed by the promoter namely; "M/s BPTP Ltd" in the year 2009. Thereafter, complainants issued an allotment letter dated 16.03.2010 vide which complainants were allotted Unit no.VLI-I7-FF, admeasuring 1402 sq. ft. Floor buyer agreement was executed between the parties on 12.04.2012. Occupation certificate has been received by the respondent from the



competent Authority on 15.12.2023. Subsequently an offer of possession was made by the respondent to the complainants on 20.07.2024.

34. Admittedly floor buyer agreement was executed between the parties on 12.04.2012 and as per clause 5.1 of it, possession was supposed to be delivered within 36 months from date of sanction of building plan or execution of the floor buyer agreement whichever is later alongwith grace period of 180 days for applying and obtaining the occupation certificate from the competent authority. The respondents, in their reply and during arguments, asserted that the building plans for the project were applied for approval on 20.01.2014 but the same have not been approved till date. So without having any exact date of approval of sanctioning of building plans, the Authority deems it appropriate to rely on the execution date of the Floor Buyer Agreement to calculate the deemed date of possession. The Floor Buyer Agreement was executed on 12.04.2012 and as per the stipulated timeline in Clause 5.1, possession was to be handed over within 36 months. This calculation leads to a deemed date of possession of **12.04.2015**. Further, Respondents in its written statement have taken a plea that grace period of 180 days be allowed as respondents had received occupation certificate on 15.12.2023. In this regard, Authority is of view that respondents were duty bound to complete the construction within 36 months of execution of



agreement, i.e., by 12.04.2015 then time period of 180 days was provided for applying for occupation certificate. Here in this case, respondents did not abide by the terms of agreement and failed to complete construction within stipulated time. Accordingly, grace period of 180 days which could have been started from 12.04.2015 got extended by another 8 years, as occupation certificate was received by respondents on 15.12.2023. Time period of 8 years taken by respondents to complete the construction work and receipt of occupation certificate is not a reasonable duration. There is no justification on record that how this time period is actually incurred for completing the unit in question. Respondents herein are claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondents to grant 180 days grace period is rejected.

35. The issue before this Authority is whether the complainants are entitled to the reliefs as claimed under the Real Estate (Regulation and Development) Act, 2016 (hereinafter "the Act").
36. The primary grievance of the complainants is that although the respondent placed on record an Occupation Certificate dated 15.12.2023 and subsequently extended an Offer of Possession on 20.07.2024, there exists an alleged legal hindrance in the form of a stay order that affects the access road leading to the allotted unit. The complainants argue that this amounts to a



legal obstruction, rendering the unit inaccessible, and thereby entitles them to claim delay compensation under RERA.

37. Upon careful examination of the submissions and documents placed on record, this Authority finds that the issue of road accessibility is the subject of a separate civil dispute pertaining to a cultivated portion of land, which is pending adjudication before the Hon'ble Punjab & Haryana High Court and the Civil Court at Faridabad. In this regard, the complainants have relied upon an interim injunction order dated 15.12.2023 passed by the Ld. Civil Judge, Faridabad. However, it is an admitted fact that the complainants are not a party to the said civil proceedings. Therefore, the complainants cannot derive any enforceable legal right, relief, or entitlement arising from litigation to which they are not a party. It is a settled principle of law that a litigant who is not a party to a pending suit cannot claim the benefit of any interim or final order passed therein. Accordingly, the Authority finds that the complainant's reliance on third-party litigation to substantiate an alleged legal obstruction is misconceived and legally unsustainable.
38. This Authority has further examined the report of the Local Commissioner (LC) who was appointed in pursuant to order dated 07.04.2025 for the limited purpose of verifying:
- (i) Whether the unit in question is complete and habitable; and



(ii) Whether there is unhindered access to the unit via road.

With respect to the first issue, the LC vide its report has clearly confirmed that the unit is complete and fit for habitation. This is supported by photographs annexed with the LC's report, which show the interior and exterior condition of the unit.

39. However, with regard to road access, the LC merely recorded that a civil dispute concerning the approach road is sub judice, but failed to document any actual physical obstruction to the road. No photographic evidence was submitted by the LC to substantiate any claim of non-accessibility. Importantly, the LC did not record a categorical finding that the approach road was physically blocked, impassable, or unconstructed. As rightly pointed out by the respondent, the scope of duties of a Local Commissioner under Order XXVI Rules 9 and 10 of the Code of Civil Procedure, 1908, is confined to recording factual physical conditions and not offering legal interpretations or opinions on the effect of ongoing litigation. The LC's remark that the road is "legally hindered" exceeds the jurisdiction conferred upon him and cannot be treated as authoritative or binding on this Authority. In the absence of tangible proof of physical inaccessibility, the complainant's claim of inaccessibility stands unsubstantiated.



40. The Authority also notes that the respondent has placed on record several documents evidencing compliance with its statutory and contractual obligations, including:

- The **Occupation Certificate dated 15.12.2023;**
- The **Offer of Possession dated 20.07.2024;** and
- **Reminder communications dated 30.01.2025,** calling upon the complainants to take possession.

Despite receipt of all these documents, the complainants have consciously chosen not to take possession and have continued to raise objections based on third-party litigation. This appears to be a calculated attempt to prolong the timeline and claim interest for delay, which is contrary to the object and spirit of the Act.

41. Moreover, the respondent has submitted that several other allottees in the same project have already taken possession of their respective units and are residing therein. It has further been submitted by the respondent that Conveyance Deeds have also been executed with such allottees. The facts have not been refuted by the complainants. This clearly demonstrates that the project is operational, and the infrastructure, including road connectivity, is functionally available to occupants. The respondent has also annexed photographs of the internal roads, including the approach road leading to the



complainant's unit, vide affidavit dated 31.05.2025 filed in the registry which shows that the road is constructed, motorable and free from any physical impediments.

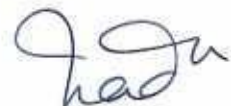
42. This Authority is also of the view that the jurisdiction of RERA is confined to adjudicating issues relating to delay in possession, quality of construction, breach of builder-buyer agreements and related matters. RERA does not have the jurisdiction to adjudicate complex civil disputes, especially those concerning title or third-party claims, which are the exclusive domain of competent civil courts.
43. In this case, the complainant's core objection revolves around a legal hindrance allegedly affecting road access—an issue that falls outside the scope of the Act. This Authority is only empowered to adjudicate physical hindrances or tangible obstructions. Since no physical obstruction has been established by the complainants, either through the LC's report or by independent documentary evidence, the grievance raised is found to be without merit.
44. Furthermore, the Authority observes that under Clause 6.1 of the Flat Buyer Agreement, in cases where possession is delayed due to any order or restraint from a competent authority, the complainant has the option to seek a refund in accordance with the contractual terms. The Respondent has even expressed



readiness to refund the amount received from the Complainants, should they opt to terminate the Agreement. It is also a settled principle under RERA that when a valid and legal offer of possession is made—supported by an Occupation Certificate—the allottee is under an obligation to take possession within a reasonable time. It is also pertinent to note that under Section 11 of the Act, the promoter is required to obtain the completion/occupation certificate and hand over possession of the unit to the allottee. In the instant case, the Respondent has duly obtained the Occupation Certificate and issued a formal Offer of Possession. Therefore, the statutory obligations of the promoter under RERA stand discharged. Once the unit is ready and possession is legally offered, the onus shifts to the allottee to accept possession and comply with the terms of the agreement. In the present case, despite the Occupation Certificate dated 15.12.2023 and the Offer of Possession dated 20.07.2024, the complainants have failed to take possession and have instead continued to rely on an external dispute to which they are not even a party. Such conduct not only delays the conclusion of the matter but also unfairly burdens the respondent, who has otherwise complied with his obligations.

45. In view of the foregoing, the Authority is of the considered opinion that:

- There is no physical obstruction to the unit;



- The Complainant is not a party to the legal dispute concerning the approach road;
- The Local Commissioner has not provided any proof of physical inaccessibility; and
- A valid and lawful Offer of Possession has already been made on 20.07.2024.

46. It is further noted that the respondent has already paid a sum of ₹14,25,410/- towards delay compensation, as recorded in this Authority's order dated 07.04.2025, thereby fulfilling its liability under the agreement and the applicable Rules.

47. Now, issue which remains to be adjudicated is delay interest. Respondent had offered valid possession of unit after receipt of occupation certificate on 20.07.2024. However, said offer of possession is made after the delay of 9 years as deemed date of handing over of possession was 12.04.2015. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand and the respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession i.e., 12.04.2015 up to the date of



valid offer of possession after receipt of occupation certificate, i.e., 20.07.2024. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

48. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

"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".

49. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(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;



50. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest

which is as under:

“Rule 15: “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”.

51. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>,

the highest marginal cost of lending rate (in short MCLR) as on date i.e., 26.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

52. Hence, Authority directs the respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the due date of possession i.e. 12.04.2015 to date of valid offer of possession, i.e., 20.07.2024.

53. Authority has got calculated the interest on total paid amount from due date of possession i.e., from the due date of possession i.e. 12.04.2015 to date of valid



offer of possession, i.e., 20.07.2024, which works out to ₹31,22,640/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 16.11.2018 (in ₹)
1.	27,52,855/-	12.04.2015 (deemed date of possession)	30,95,853/-
2.	28,341/-	22.11.2016	26,787/-
Total	27,81,196/-		31,22,640/-

Note: The respondent is liable to pay delay interest to the complainants amounting to ₹31,22,640/-, calculated on the total amount paid by the complainants from the due date of possession, i.e., 12.04.2015, to the date of valid offer of possession, i.e., 20.07.2024. However, it is an admitted fact by both parties that the respondent has already paid an amount of ₹14,25,410/- towards delayed possession interest. **Accordingly, the balance amount remaining payable by the respondent is ₹16,97,230/- (i.e., ₹31,22,640/- minus ₹14,25,410/-)**

54. The complainants are also seeking compensation of ₹8,00,000/- for mental agony/harassment and for deficiency of service and ₹50,000/- (Rupees Fifty Thousand only) towards cost of legal expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of

compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

55. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act, 2016 to ensure the compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016

- a. Complainants are directed to accept the offer of possession issued by the respondent on 20.07.2024 and take physical possession of the booked unit from the respondent.
- b. Respondent is directed to pay upfront delay interest of ₹16,97,230/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.



- c. Respondent is directed to get conveyance deed of flat of the complainants executed within 90 days of actual handover of possession of floor.
- d. The rate of interest chargeable from the allottees by the promoter in case of default shall be charged at the prescribed rate, i.e., 11.1% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- e. The respondent shall not charge anything from the complainant which is not a part of agreement to sell/FBA.

56. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]