

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

**Complaint no.:** 4572 of 2024  
**Date of decision:** 27.08.2025

Manav Mehra  
**R/o:-** 5519, Orchard Crescent Lane,  
DLF Phase-4, Gurugram.

**Complainant****Versus**

M/s. French Buildmart Private Limited  
(Erstwhile M/s Capital SkyScraper Private Limited)  
**Regd. office:** - C-96, Panchsheel Enclave, New Delhi-  
110017.  
**Corporate office:** - 1<sup>st</sup> Floor, Capital Cyber Space, Sector-  
59, Gurugram- 122102.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Shajat Kataria (Advocate)  
Garvit Gupta (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 project	"The Cityscape"
2.	Nature of project	Commercial unit
3.	Location of project	Sector-66, Gurugram, Haryana.
4.	RERA registered	Registered Vide registration no. 02 of 2022 Dated-24.01.2022.
5.	DTCP License	License no. 43 of 2010 Dated-8.06.2010
6.	Buyer's Agreement	04.03.2014 (As on page no. 22 of complaint)
7.	Unit no.	181, Floor-1 <sup>st</sup> , Tower-Phase (As on page no. 28 of complaint)
8.	Unit area	432 sq.ft. [Super-Area] (As on page no. 28 of complaint)
9.	Possession clause	<b>Clause 7</b> <b>POSSESSION</b> (a) The Company endeavors to offer the possession of the Unit in the Commercial Complex to the Allottee(s) within a period of 36 (thirty Six) months from the date of commencement of construction of the project hereof, i.e., date on which raft of the entire project must be casted (the "Commencement of Construction") and this date

		<p>shall be duly communicated to the Allottee(s), subject to Force Majeure and/or any other reason beyond the control of the Company, .....</p> <p>(b) The Allottee(s) understands and agrees that Company shall be entitled to an extension period of <b>180 (one hundred and eighty) business days over the said period of 36 months</b> (the "Grace Period"), for handing over the possession of the Unit to the allottee(s). If the possession of the Unit gets further delayed due to any reason and/or conditions/events which are unforeseeable then the <b>Company shall be entitled to an additional grace period of 180 (one hundred and eighty) business days</b> (the "Additional Grace Period") over and above the said <b>Grace Period</b>.  [Emphasis supplied]  (As on page no. 34 of complaint)</p>
10.	Due date of possession	16.12.2017 [Calculated 36 months from the date of casting of raft of entire project i.e., 16.12.2016+180 days + 180 days]
11.	Sale consideration	Rs.27,00,000/- As per payment plan annexed at page no. 56 of complaint)_
12.	Amount paid	Rs.22,65,126/- (As per statement of account on page no. 118 of reply)



13.	Occupation certificate	28.11.2022 (As on page no. 113 of reply)
14.	Offer of possession	24.12.2022 (As on page no. 106 of reply)

## B. Facts of the complaint

### 3. The complainant has pleaded the following facts:

- I. That the property in question i.e. unit no. 181, First Floor, admeasuring 40.13 sq. mts. (432 sq. ft.) situated in the project of the respondent i.e. "The Cityscape" situated at Sector-66, Gurugram, Haryana, was purchased by M/s Best Selling Realty Pvt. Ltd. on 15.11.2012 which was further purchased by the complainant that was duly acknowledged by the respondents.
- II. That the Buyer's Agreement was registered between the parties on 04.03.2014 by virtue of which the complainant was allotted unit no. 181, First Floor, admeasuring 40.13 sq. mts. (432 sq. ft.) for a total sale consideration of Rs.27,00,000/-.
- III. That as per Clause 7(b) of the Buyer's Agreement dated 04.03.2014, the respondent undertook to handover the possession of the said apartment within a period of 36 months plus 6 months grace period i.e. 07.11.2016, with further additional grace period of 6 months i.e. 07.05.2017 from the date of transfer which was mentioned in clause 7(b) of Buyer's Agreement, which reads as:

**Clause 7(b):** "The Allottee(s) understands and agrees that company shall be entitled to an extension period of 180 (One Hundred and eighty) business days over the said period of 36 months (the "Grace Period") for handing over the possession of the Unit to the Allottee(s). If the possession of the Unit gets further delayed due to any reason and/or conditions/ events which are unforeseeable then the Company shall be entitled to an additional

*grace period of 180 (One Hundred and eighty) business days (the "Additional Grace Period") over and above to said Grace Period.'*

- IV. That the said buyer's agreement is totally one sided, which impose completely biased terms and conditions upon the complainant, thereby tilting the balance of power in favour of the respondent, which is further manifested from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.10/- per sq.ft per month, on the super area of the unit for any delay in possession beyond the given date plus grace period of 12 months till the date of notice of possession.
- V. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 78 months as per the registered Buyer's Agreement and still the condition of the unit is not habitable with various flaws. In accordance with clause 7(b) of the Buyer's Agreement, the respondent was required to provide possession of the specified unit by 04.03.2018, inclusive of a period of 36 months plus an additional 12 months grace period.
- VI. Since the offer of possession no work has been done by the respondent in the said unit with various flaws which are clearly evitable. This action constitutes a breach of contract, particularly since the agreement included a construction-linked plan and stipulated possession by 04.03.2018. Consequently, the respondent was not entitled to request additional funds from the complainant. After multiple visits to the project site still no progress is observed. Additionally, the complainant incurred interest expenses on the amount paid to the respondent.
- VII. The Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The allottees cannot be expected to wait endlessly for taking



possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration. The complainant has paid a total amount of Rs.22,65,126/- to the respondent till date.

VIII. That the complainant sent multiple emails to the respondent inquiring about the status of their unit, but the respondent failed to provide any response. The complainant, therefore, seeks direction to the respondent to handover the possession of the apartment in question, in a time bound manner, along with interest @ 18% p.m., towards delay in handing over the property in question.

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

4. The complainant has sought following reliefs:

- i. Direct the respondent to make Payment of delay interest @ 18% p.m. starting from November 2016 till possession of unit as penalty to complainant towards delay in handing over the property in question.
- ii. Direct the respondent to handover possession of unit duly completely in all respect i.e. in habitable condition and in conformity of the specification to the Complainant as expeditiously as possible;
- iii. Direct the respondent to give the details of the Unit as per the PLC and also the size of the said unit.
- iv. Direct the respondent to give the details of the rate charged regarding the common area maintenance of the allotted unit and revise the rate for maintenance as Rs 21/- per Sq. Ft. is exorbitant amount.
- v. Payment of Rs.1,00,000/- as compensation towards mental agony caused to the complainant.
- vi. Payment of Rs.1,00,000/- towards the litigation expenses for the filing of the complaint.

5. On the date of hearing, the authority explained to the respondents /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 the respondent**

6. The respondent has contested the complaint on the following grounds:
- I. That the complaint is barred by limitation. The so called cause of action as per the version of the complainant arose prior to the enactment of the Act. The false and frivolous complaint is liable to be dismissed on this ground as well.
  - II. That the complainant is not "allottee" but investor who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainant as a speculative investment and not for the purpose of self-use. In the year 2012 for purchase of a unit the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
  - III. Thereafter, the complainant vide application form dated 03.12.2012 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application, was allotted an independent unit bearing no. 181 admeasuring 432 sq.ft. (super area) located on the First Floor in the said project vide provisional allotment letter dated 19.07.2013.
  - IV. The complainant had consciously and willfully opted for a "construction linked plan" for remittance of the sale consideration for the said unit and further represented to respondent that he shall remit every installment on time as per the payment schedule. The complainant further undertook to be bound by the terms and conditions of the application form.



- V. That the Buyer's Agreement was executed between the complainant and respondent on 04.03.2014. That commencement of construction at the project site/casting of raft had taken place by 16.12.2013. Thus, as per Clause 7 of the Agreement, the date of start of construction was 16.12.2013.
- VI. That the "high street plan" as had been initially conceptualized by the associate company of the Respondent would not have been conducive for commercial success for the said project. Therefore, certain modifications were necessary to be made in the building plans for the benefit of the allottees. It is submitted that the respondent had applied to the concerned statutory authority vide letters dated 15.12.2018 and 03.04.2019 for amendment/revision in building plans. It is pertinent to mention that the revised building plans for the said project had been sanctioned by the concerned statutory authority on 11.05.2020 vide Memo No. ZP-661/JD(RD)/2020/7824.
- VII. That the time consumed by the Government authorities in sanctioning the revised building plans is beyond the control of the respondent and therefore, the said time period must not be construed as a delay. The associate company of the respondent has duly complied with the requirements put forth by the concerned authorities in order to make the necessary amendment /changes in the building plans. Furthermore, the respondent had also made payment of substantial amounts to the concerned authorities in order to avail the Transit Oriented Development (TOD) benefits and get the approvals with respect to revised building plans.
- VIII. That the rights and obligations of the complainant as well as the respondent are completely and entirely determined by the covenants



incorporated in the Buyer's Agreement. It is pertinent to mention that it had been duly mentioned in Clause 7 of the buyer's agreement that possession of the said unit would be handed over to the complainant within a period of 36 months from the date of casting of the raft for the project (16.12.2013). Furthermore, the respondent was also entitled to a cumulative grace period of 360 business days (grace period + additional grace period) over and above the said period of 36 months for handing over of possession of the said unit to the complainant.

- IX. That the construction work at the project site had been halted since November, 2017 on account of the ban imposed by the Honorable Supreme Court over all construction activities in Delhi-NCR. The details of the force majeure conditions which impacted the implementation of the project from time to time are as under:-

<i>Date of order</i>	<i>Directions</i>	<i>Period of restriction</i>	<i>Days affected</i>	<i>Comments</i>
07.11.2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns stones crushers, hot mix plants, etc. with effect from 7 <sup>th</sup> Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives.



				<p>with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant.</p> <p>It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.</p>
09.11.2017-17.11.2017	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting carrying on the of construction by any person, private, or		9 days	<p>On account of passing of the aforesaid order, no construction activity could have been legally carried out by Respondent. Accordingly, construction activity has been completely</p>





	<p>government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted competition interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th Nov, 17.</p>			<p>stopped during this period</p>
29.10.2018	<p>Haryana Pollution State Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance directions Environmental of of Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction</p>	<p>1<sup>st</sup> to 10<sup>th</sup> Nov, 2018</p>	<p>10 days</p>	<p>On account of the passing of the aforesaid order, construction activity could have been legally carried out by Respondent. Accordingly, construction activity has been completely stopped during this period</p>

	activities including excavation, construction directed to the civil were remain close in Delhi and other NCR districts from 1 <sup>st</sup> to 10 <sup>th</sup> Nov, 2018			
21.07.2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal crushers Mahendergarh stone in Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation		30 days	the directions of the NGT were again a setback for crushers operators stone who have finally succeeded to obtain necessary permissions from competent authority the after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices



	relatable to the cost of restoration			which consequently affected the pace of construction
11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during the period	11.10.2019-31.12.2019		On account of the passing of the aforesaid order, construction activity could have been legally carried out by Respondent. Accordingly, construction activity has been completely stopped during the period.
04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned	04.11.2019-14.02.2020	102 days	These bans forced migrant laborers to return to their native towns/states/villages creating an acute shortage of laborers in the NCR Region. Due to the said shortage the



	all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.			Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
3 <sup>rd</sup> Week of February, 2020	Covid-19 Pandemic	Feb, 2020 till date	To date(3 months nationwide lockdown)	Since the 3 <sup>rd</sup> week of February 2020, the Respondent has also suffered devastatingly e because of the outbreak, spread, and resurgence of COVID-19 in the year 2020. The concerned statutory authorities had earlier imposed a blanket ban on construction activities Gurugram. Subsequently, the said embargo had been lifted to a limited extent. However, during the interregnum, large-



				scale migration of labor occurred and the availability of raw material started becoming a major cause of concern.
COVID in 2021	That period from 12.04.2021 to 24.07.2021, each and every including activity the construction activity was banned in the State	12.04.2021 to 24.07.2021	103 days	Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and complete curfew.
		Total days	515 days	

- X. That the complainant has been a continuous defaulter from the very inception. Despite being aware that timely payment of the installments amount was the essence of the allotment, the complainant miserably failed to adhere to the timelines stipulated in the demand letters from time to time. It is submitted that vide demand letter dated 20.09.2021 the respondent had demanded Rs.3,92,472/- including previous dues from the complainant. However, for the reasons best known to the complainant, he failed to remit the due amount towards the total sale consideration to the respondents
- XI. That despite such event, the respondent completed the construction of the said project and offered the possession of the unit vide letter dated 24.12.2022. The Occupation certificate of the project in question was granted by the concerned authorities, after complete due diligence on 28.11.2022. The respondent accordingly at the time of offer of

possession demanded the remaining amount as per the terms of the Agreement.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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**

10. 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; made thereunder.*



11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
- F. Findings on the objections raised by the respondent:**
- F.1 Objection regarding complaint being barred by Limitation.**
12. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
13. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
14. In the present matter the cause of action arose on 24.12.2022 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 25.09.2024 which is 1 year 8 months and 28 days from the date of cause of action. The Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

**F.II Objection regarding complainant being "Investor" and not "Consumer".**

15. The respondent has taken a stand that the complainants are investor and not consumers. Therefore, they are not entitled to the protection of the Act and also not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter 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 apartment buyer's agreement, it is revealed that the complainant is buyer and paid total price of Rs.22,65,126/- to the promoter towards purchase of an 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;"*

16. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee as the subject unit was allotted to her 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”. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F.III. Objection regarding delay in construction due to certain Force majeure circumstances.**

17. The respondent has raised a contention that the construction of the project was delayed due to force majeure conditions such as outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the ‘buyer’s agreement’ was executed between the parties on 04.03.2014. As per clause 7 of the agreement dated 04.03.2014, the respondent had to offer possession of the unit to the complainant within a period of 36 (Thirty Six) months from the date of commencement of construction of the project. Also, a grace period of 180 days is agreed between the parties over and above the said period of 36 months. The respondent has stated that the casting of raft of the entire project commenced on 16.12.2013, thus the date of start of construction was 16.12.2013. The period of 36 months is calculated from the date of commencement of construction i.e., 16.12.2013 also, the grace period being unqualified is granted in favour of the respondent. As per clause 7(b) the



parties agreed for an additional grace period of 180 days, over and above the grace period of 180 days. The relevant clause is reproduced below:

*"7(b). The Allottee(s) understands and agrees that Company shall be entitled to an **extension period of 180 (one hundred and eighty) business days over the said period of 36 months** (the "Grace period"), for handing over the possession of the Unit to the allottee(s). If the possession of the Unit gets further delayed due to any reason and/or conditions/events which are unforeseeable then the Company **shall be entitled to an additional grace period of 180 (one hundred and eighty) days** (the "Additional Grace Period") over and above the said Grace Period.*

18. Thus, the due date of possession comes out to be 16.12.2017. The respondent has stated that respondent had applied to the concerned statutory authority vide letters dated 15.12.2018 and 03.04.2019 for amendment/revision in building plans and the revised building plans had been sanctioned by the concerned statutory authority on 11.05.2020 vide Memo No. ZP-661/JD(RD)/2020/7824 and the time consumed by the authorities in sanctioning the revised building plans is beyond the control of the respondent and therefore, the said time period must not be construed as a delay. Furthermore, the respondent had also made payment of substantial amounts to the concerned authorities in order to avail the Transit Oriented Development (TOD) benefits and get the approvals with respect to revised building plans. Vide letter dated 06.07.2017, the respondent applied to the Director, Town & Country Planning Department, Haryana, Chandigarh for increase in FAR from 175 to 350. The in-principal approval for grant of benefit under TOD policy for enhancement of FAR had been granted to the respondent on 22.03.2018. Subsequently, final permission with respect to benefit under TOD policy for enhancement of FAR had been granted to the respondent on 06.02.2019. The respondent is seeking exclusion of the said period that has been taken by the authorities to get the approvals for revised building plans. The Authority is of the view that the said period as aforesaid

mentioned has not been declared as "zero-period" by the competent authorities and a grace period of 180 days over and above the promised due date and also, additional grace period of 180 days has already been provided to the respondent. Further, the respondent has stated that due to the outbreak of Covid-19 the project was stalled. Since, the due date of possession was prior to the coming of Covid-19, no further extension is granted to the respondent.

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

**G.I Direct the the respondent to make Payment of delay interest @ 18% p.m. starting from November 2016 till possession of unit as penalty to complainant towards delay in handing over the property in question.**

**G.II Direct the respondent to handover possession of unit duly completely in all respect i.e. in habitable condition and in conformity of the specification to the Complainant as expeditiously as possible;**

19. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant booked a unit in the project namely "The Cityscape", being developed by the respondent in Sector-66, Gurugram. The complainant was allotted a unit bearing no. 181 on First Floor in Tower-Phase, in the project "The Cityscape" situated in Sector 66 of the respondent for a sale consideration of Rs.27,00,000/- and he has paid a sum of Rs.22,65,126/- till date. The buyer's agreement dated 04.03.2014 was executed between the parties.
20. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***Section 18: - Return of amount and compensation***

*"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."*

**21. Due date of handing over possession and admissibility of grace period:**

As per clause 7(a) of the agreement dated 04.03.2014, the respondent was obligated to complete the construction of the project and hand over possession of the subject unit within a period of 36 months from the date of commencement of construction of the project i.e., the date on which raft of the entire project must be casted. Further, as per clause 7(b) of the agreement dated 04.03.2014, a grace period of 180 days has been agreed over and above the said period of 36 months between the parties. Further as per clause 7(b) of the agreement dated 04.03.2014, an additional grace period of 180 days was agreed between the parties over the above the grace period. The said clause is reiterated below:

*"Clause 7*

***POSSESSION***

*(b) The Allottee(s) understands and agrees that Company shall be entitled to an extension period of 180 (one hundred and eighty) business days over the said period of 36 months (the "Grace Period"), for handing over the possession of the Unit to the Allottee(s). if the possession of the Unit get a further delayed due to any reason and/or conditions/events which are unforeseeable then the Company shall be entitled to an additional grace period of 180 (one hundred and eighty) business days (the "Additional Grace period") over and above the said Grace Period."*

22. As per respondent's submission, the respondent has stated that the casting of raft of the entire project commenced on 16.12.2013, thus the date of start of construction was 16.12.2013. The period of 36 months is calculated from the date of commencement of construction i.e., 16.12.2013 also, the grace period being unqualified is granted in favour of the respondent. As per clause 7(b) the parties agreed for an additional grace period of 180 days, over and above the grace period of 180 days. As per respondent's submission in its reply at page no. 70 of reply, the respondent has stated that the casting of



raft of the entire project commenced on 16.12.2013, thus the date of start of construction was 16.12.2013. The period of 36 months is calculated from the date of commencement of construction i.e., 16.12.2013 also, the grace period being unqualified is granted in favour of the respondent. As per clause 7(b) the parties agreed for an additional grace period of 180 days, over and above the grace period of 180 days. Thus, the due date of possession comes out to be 16.12.2017.

**23. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant intends to continue with the project and 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. Rule 15 has been reproduced as under:

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

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

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

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.08.2025

is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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

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

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.

28. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 7 (a) and (b) of the agreement dated 04.03.2014, the due date comes out as 16.12.2017. Occupation certificate was granted by the concerned authority on 28.11.2022 and thereafter, the possession of the subject unit was offered to the complainant on 24.12.2022. Copies of the same have been placed on record. The Authority is of the view that there is delay on the part of the respondent to offer possession of the



subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 04.03.2014 to hand over the possession within the stipulated period.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.11.2022. The respondent offered 24.12.2022, 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 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he 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 till actual handing over of possession or offer of possession plus two months whichever is earlier.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 10.85 % p.a. w.e.f. 16.12.2017 till the expiry of 2 months from the date of offer of possession (24.12.2022) which comes out to be 24.02.2023 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. Further, the respondent is



directed to handover possession of the unit to the complainant within a period of 30 days of this order

**G.III Direct the respondent to give the details of the unit as per the PLC and also the size of the said unit.**

31. The Authority observes that as per Section 19(1) of the Act, the allottee is entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in the Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Further, as per Section 11(4)(a) of the Act, 2016, the promoter is responsible for all obligations, responsibilities and functions under the provisions of the Act or rules and regulations made thereunder or the agreement for sale. Therefore, in view of the above, the respondent/promoter is directed to provide specifications regarding unit in question to the complainants/allottee within a period of 30 days from the date of this order.

**G.IV Direct the respondent to give the details of the rate charged regarding the common area maintenance of the allotted unit and revise the rate for maintenance as Rs 21/- per Sq. Ft. is exorbitant amount.**

32. The complainant has sought the relief that the respondent to give the details of the rate charged regarding the common area maintenance of the allotted unit and revise the rate for maintenance as Rs.21/- per sq. ft. Hence, the respondent is directed to charge the common area maintenance in terms of the buyer's agreement dated 04.03.2014.

**G.V. Direct the respondent to pay an amount of Rs.1,00,000/- as compensation towards mental agony caused to the complainant.**

**G.VI Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant along with other charges.**

33. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP*

*(Supra)* has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

## II. Directions of the Authority

34. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act:

- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 16.12.2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- 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., 10.85% 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 is directed to provide an updated statement of accounts to the complainant within a period of one week from the date of this



order and thereafter, the complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iv. The respondent is directed to handover physical possession of the unit to the complainant within 30 days of this order. The respondent is further directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 60 days of the order.
  - v. The respondent is directed to provide specifications regarding unit in question to the complainant/allottee within a period of one month from the date of this order.
  - vi. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
35. Complaint as well as applications, if any, stand disposed of accordingly.
36. File be consigned to registry.

**Dated:** 27.08.2025



**(Ashok Sangwan )**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram