

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

Date of Order: 24.07.2025

NAME OF THE BUILDER		ORRIS INFRASTRUCTURE PRIVATE LIMITED	
PROJECT NAME		"FLOREAL TOWERS"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7841/2022	Apurva Patodia V/S Orris Infrastructure Private Limited	Shri Dharmender Sehrawat Advocate (for complainant) and Ms. Charu Rustagi Advocate (for Respondent)
2.	CR/7842/2022	Pranay Patodia V/S Orris Infrastructure Private Limited	Shri Dharmender Sehrawat Advocate (for complainant) and Ms. Charu Rustagi Advocate (for Respondent)

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority 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 there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "Floreal Towers" (Commercial Colony) being developed by the same respondent/promoter i.e., M/s Orris Infrastructure Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	Orris Infrastructure Private Limited at "Floreal Towers" situated in Sector- 83, Gurugram.				
Project Area	9.052 Acres				
DTCP License No.	260 of 2007 dated 14.11.2007 valid up to 13.11.2024				
RERA Registered	Un-registered				
Possession Clause: -					
11.A Schedule for Possession of the said unit					
<i>"The company based on its present plans and estimates and subject to all just exceptions, contemplates to handover the possession of the building/said unit within the period of 36 months from the date of the builder buyer's agreement by the company unless there shall be delay or there shall be failure due to reasons mentioned in clauses....."</i>					
[Emphasis supplied]					
Due date of possession: 09.02.2022 [09.08.2021 + 6 month on account of Covid-19] (Note: as per clause 11.A of BBA, the due date is calculated 36 months from the date of execution of builder buyer's agreement dated 09.08.2018)					
Occupation certificate: 16.08.2017.					
Offer of possession: 12.03.2020.					
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of MoU, Allotment letter and buyer's agreement	Status of Possession, and OFF	Total sale consideration and amount paid
1.	CR/7841/2022 Apurva Patodia V/S Orris Infrastructure Private Limited DOF 21.12.2022 Reply 12.10.2023	1103, 11 th Floor and Tower-B 1150 sq. ft. [super area] [page 66 of complaint] 1088 sq. ft. (revised super area) (As per allotment letter dated	MoU: 19.12.2009 [at page 17 of complaint] AL: 27.08.2014 (at page 25 of complaint) BBA: 09.08.2018 (at page 30 of complaint)	Due date of possession: 09.02.2022 [09.08.2021 + 6 month on account of Covid-19] (Note: as per clause 11.A of BBA, the due date is calculated 36 months from date of execution of buyer's agreement dated 09.08.2018) OC:	BSP: - Rs.28,14,678/- (As mentioned in SoA at annexed with OFF dated 12.03.2020 at 24 of additional documents submitted by respondent) TSC: - Rs.35,40,102/- (As mentioned in SoA at annexed



		27.08.2014 at page 25 of complaint)		16.08.2017 (page 17 of reply) OFFP: 12.03.2020 (page 22 of additional documents submitted by respondent)	with OFFP dated 12.03.2020 at 24 of additional documents submitted by respondent) AP: - Rs.31,50,000/- (As per receipt information on page no. 22-24 of the complaint)
2.	CR/7842/2022 Pranay Patodia V/S Orris Infrastructure Private Limited DOF 21.12.2022 Reply 12.10.2023	1102, 11 th Floor and Tower-B 1150 sq. ft. (super area) (page 68 of complaint) 1000 sq. ft. (revised super area) (As per allotment letter dated 27.08.2014 at page 27 of complaint)	MoU 19.12.2009 (at page 19 of complaint) AL 27.08.2014 (at page 27 of complaint) BBA 09.08.2018 (at page 32 of complaint)	Due date of possession: 09.02.2022 [09.08.2021 + 6 month on account of Covid-19] (Note: as per clause 11.A of BBA, the due date is calculated 36 months from date of execution of buyer's agreement dated 09.08.2018) DC: 16.08.2017 (page 17 of reply) OFFP: 12.03.2020 (page 23 of additional documents submitted by respondent)	BSP: - Rs.25,87,020/- (As mentioned in SoA at annexed with OFFP dated 12.03.2020 at 25 of additional documents submitted by respondent) TSC: - Rs.32,56,445/- (As mentioned in SoA at annexed with OFFP dated 12.03.2020 at 25 of additional documents submitted by respondent) AP: - Rs.31,50,000/- (As per receipt information on page no. 24-26 of the complaint)

The complainants in the above complaint(s) have sought the following reliefs:

1. Direct the respondent to deliver the possession and to pay the interest for every month of delay at the prevailing rate of interest;
2. Direct the respondent to pay compensation and damages for mental, financial and physical harassment of Rs.20,00,000/-.

Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
MoU	Memorandum of understanding
AL	Allotment letter
BSP	Basic sale price
TSC	Total sale consideration
AP	Amount paid by the allottee(s)
OC	Occupation certificate
OFFP	Offer for possession

4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/7841/2022 titled as Apurva Patodia V/S Orris Infrastructure Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

7. 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:

CR/7841/2022 titled as Apurva Patodia V/S Orris Infrastructure Private Limited

S.N.	Particulars	Details
1.	Name and location of the project	"Floreal Towers", Sector-83, Gurugram
2.	Nature of the project	Commercial
3.	Project area	9.052acres
4.	DTCP License and validity	260 of 2007 dated 14.11.2007 valid up to 13.11.2024
5.	Name of the licensee	Seriatim Land and Housing Pvt. Ltd.

6.	RERA Registration	Un-registered
7.	Unit no. and floor no.	1103, 11 th Floor and Tower-B (As per page no. 66 of the complaint)
8.	Unit area admeasuring	1150 sq. ft. (super area) (As mentioned in MOU dated 19.12.2009)
		1088 sq. ft. (Revised super area) (reduced by 5.39%) (As per allotment letter dated 27.08.2014 at page 25 of complaint)
9.	Date of MOU	19.12.2009 (As per page no. 17 of the complaint)
10.	Investment Return clause	<i>2. After receipt of consideration of Rs.31,50,000/-, the developer shall give an investment return @ 60/- per sq. ft. per month i.e., Rs.69,000/- with effect from 01.03.2010 on or before 7th day of every month. That the construction of the project is likely to take two years effective 01.03.2010. If the construction of project is delayed by more than 2 years starting from the date of 01.03.2010, the developer shall continue to pay return @ Rs.60/- per sq. ft. per month i.e., Rs.69,000/- till the date the project is complete or till physical possession handover at site whichever is later.</i> (As per page no. 19 of the complaint)
11.	Allotment letter	27.08.2014 (As per page no. 25 of the complaint)
12.	Date of execution of space buyer's agreement	09.08.2018 (As per page no. 30 of the complaint)
13.	Possession clause	11.A Schedule for Possession of the said unit <i>"The company based on its present plans and estimates and subject to all just exceptions, contemplates to handover the possession of the building/said unit within the period of 36 months from the date of the builder buyer's agreement by the company unless there shall be delay or there shall be failure due to reasons mentioned in clauses..."</i> [Emphasis supplied] (As per BBA at page no. 45 of the complaint)

14.	Due date of possession	09.02.2022 [09.08.2021 + 6 month on account of Covid-19] (As per BBA at page no. 45 of the complaint)
15.	Basic sale consideration	Rs.28,14,678/- (As mentioned in SoA at annexed with OFP dated 12.03.2020 at 24 of additional documents submitted by respondent)
16.	Total sale consideration	Rs.35,40,102/- (As mentioned in SoA at annexed with OFP dated 12.03.2020 at 24 of additional documents submitted by respondent)
17.	Amount paid by the complainant	Rs.31,50,000/- (As per page no. 41 of the complaint)
18.	Offer of possession for fit-out	10.03.2017 (As per page no. 26 of the complaint)
19.	Occupation Certificate/ completion certificate	16.08.2017 (As per page no. 17 of the reply)
20.	Offer of physical possession	12.03.2020 (As per page no.22 of the additional documents submitted by respondent.)

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:
- I. That the respondent is a real estate developer and respondent approached the complainant in the month of November, 2009 and represented that a project named "Floreal Towers" situated at Village Kherki Daula, Sector-83, Gurugram, for which requisite permissions had been obtained.
 - II. That on 19.12.2009 a memorandum of understanding was executed between the parties, wherein the respondent agreed to sell an area of 1150 sq. ft. @ Rs.2740/- per sq. ft., therefore for a total consideration amounting to Rs.31,50,000/-. The respondent also through the MoU, agreed to pay commitment charges to the complainant @ Rs.60/- per

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sq. ft. per month till the physical possession is handed over to the complainant by the respondent.

- III. That at the time of executing the memorandum of understanding, even before the allotment of units, the complainant paid the consideration amount i.e., Rs.31,50,000/- in full. The first payment was made for Rs.15,75,000/- vide cheque no. 802879 dated 16.10.2007 and the receipt dated 20.10.2007 was issued by the respondent. The second payment was made for Rs.7,87,500/- vide cheque no. 905107 and receipt dated 31.12.2007 was issued by the respondent. Further, third and the final payment of Rs.7,87,500/- was made vide cheque no. 905110 dated 12.07.2008 against which receipt dated 17.07.2008 was issued by the respondent. That thereafter, on 27.08.2014, unit no.1103 was allotted to the complainant in Tower - B admeasuring 1150 sq. ft.
- IV. That the respondent had been paying commitment charges regularly to the complainant till December 2016. But, however since January 2017, the respondent stopped paying the commitment charges to the complainant. The complainant contacted the officials of the respondent multiple times through phone calls and e-mails but to no avail. That the complainant after discussing with the officials of the respondent even agreed to accept cheques for part payment, but however, no action was taken by the respondent in respect of the same.
- V. That the complainant kept enquiring about the pending commitment charges and the date for handing over of possession, however the respondent kept ignoring the requests of the complainant. That the respondent sent a letter on 10.03.2017 offering temporary possession of the unit for fit-outs but no offer was made to hand over the permanent physical possession.

- VI. That thereafter, the respondent promised that the possession of the property will be handed over after the execution of the space buyer's agreement. That the complainant, having no other option left, agreed to enter into the agreement. Thus, after almost 10 years, on 09.08.2018, a space buyer's agreement was executed between the complainant and the respondent. The clause 11A of the said agreement explicitly states that the possession of the unit will be handed over within 36 months of the agreement however, no possession has been handed over yet.
- VII. That as per the MoU, the respondent had promised a unit with an area of 1150 sq. ft. However, in the allotment letter and in the space buyer agreement, the area of the unit is mentioned as 1088 sq. ft.
- VIII. That on 10.01.2019, the complainant received an e-mail from the office of the respondent stating that the respondent would be offering possession of the office units to the allottees and that they would finalize the same by 25.01.2019 and get in touch accordingly. However, the respondent failed to fulfil their promises yet again. The respondent kept delaying the handing over of the physical possession on the pretext that they are not able to put the building out on lease. The complainant was being understanding and patient but however one year passed but no progress was made. The complainant again contacted the respondent through e-mail on 21.01.2020 inquiring about the pending commitment charges and the delay in handing over of the physical possession to which the officials of the respondent, replied by offering the constructive possession. The complainant insisted on handing over the physical possession but the respondent kept on denying the request of the complainant. That again on 20.07.2020, the complainant sent an e-mail to the respondent to inquire about the handing over of the possession but the same was

ignored by the respondent as usual. Also, the complainant visited the office of the respondent multiple times and even contacted its official on call regularly, but every time the officials of the respondent gave excuses to the delay the handing over of the possession and also failed to provide the solution to the pending commitment charges.

- IX. That to the shock of the complainant, the respondent sent a letter in 16.12.2021 stating that the complainant was liable to pay property tax for the unit whose possession had not been handed over to the complainant by the respondent. The complainant again requested the respondent to hand over the physical possession so that the property tax can be paid, however, the respondent kept pressing the complainant to pay the property tax and refused to hand over the physical possession of the unit despite claiming that the construction is complete and occupation certificates have arrived from the concerned authority.
- X. That thereafter, the complainant even sent a legal notice dated 19.02.2021 to the requesting the handover the possession and also pay the commitment charges. However, the officials of the reassured the complainant that the possession will be handed over and the commitment charges would also be paid. In regards with the same, the complainants also tried to reach a settlement with the respondent and an email was also received from the officials of the respondent on 20.01.2022 with regards to settlement. However, the neither the settlement was reached nor the possession was handed over. It is also pertinent to note that the delay payment charges have also not been paid.
- XI. That the respondent has acted fraudulently by failing to pay the commitment charges to the complainant as per the MOU dated

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19.12.2009 and by refusing to hand over the physical possession of the allotted unit as per the MoU and the space buyer's agreement dated 09.08.2018, which has caused humongous loss and mental agony to the complainant. Further, the respondent has reduced the area of the unit from 1150 sq. ft. to 1088 sq. ft., which again has caused huge loss to the complainant as the complainant has paid the full consideration amount for a unit measuring 1150 sq. ft. Thus, the complainant seeks the possession of the unit with the original area of 1150 sq. ft. along with delay possession charges as per the act, as the respondent has acted in default.

- XII. That furthermore, the complainant, also seeks the amount of pending assured returns/ commitment charges amounting to Rs.44,09,100/- along with interest @18% per annum, amounting to Rs.29,34,038.73/- from January 2017 till August 2022 and also a sum of Rs.20,00,000/- towards mental agony.
- XIII. As per Section 18 of the Real Estate (Regulation and Development) Act, 2016 the allottee is entitled to claim compensation for delay caused by the builder in handing over possession of the unit or entitled to claim the amount received by the promoter with interest.
- XIV. That respondent has not bothered to act accordingly and did not comply with the terms and conditions of the space buyer's agreement and did not handover the possession of the unit till date. That the space buyer agreement was signed in 2018, the complainant had invested the money in the project back in 2007. Technically, there has been a delay of 1 year, however, the funds of the complainant are being used by the respondent for the last 15 years. Thus, the complainant is entitled to get delay possession charges from the years 2007 till the date of handing over of the possession.

- XV. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest as per RERA Act in case of any default on his part. They are also liable to pay pendent lite interest and further interest till date of actual payment.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- i. Direct the respondent to deliver the possession and to pay the interest for every month of delay at the prevailing rate of interest;
 - ii. Direct the respondent to pay compensation and damages for mental, financial and physical harassment of Rs.20,00,000/-.
10. 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:

11. The respondent has contested the complaint on the following grounds:
- I. That the present complaint pertains to possession along with delay possession charges and compensation for a grievance under 18 of the Real Estate (Regulation & Development) Act, 2016 and the Authority does not have any jurisdiction to grant the relief of compensation under Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 read with Section 31 and Section 71 of the said Act as the complaint for compensation was to be filed separately before the Adjudicating Officer under Rule 29. That it is further submitted that the complainant cannot seek assured return and delay possession charges both as a matter of relief as the same is against the principle of natural justice.

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- II. That in the present complaint, the complainant was allotted unit no. 1103, 11th floor, tower A, admeasuring 1150 sq. ft. in the project 'Floreal Towers', located at Sector-83, Gurugram, Haryana.
- III. That the memorandum of understanding between the parties was executed on 19.12.2009 and the builder buyer agreement between the parties took place on 09.08.2018. That the respondent has acted in accordance with the terms and conditions of the buyer's agreement executed between the parties on their own free will, wherein as per clause 11A of the buyer's agreement, the respondent was supposed to hand over the possession within a period of 36 months from the date of execution of buyer's agreement, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (13.1), (13.2) and Clause (35) or due to failure of Allottee(s).
- IV. That thereafter, several obstructions had taken place which hampered the pace of the construction such as directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. Further, due to non-availability of raw material due to various stay orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby stopping/regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. Furthermore, the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. It was almost 2 years that the scarcity as detailed above continued, despite which all efforts were made and

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materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. That the above said restrictions clearly fall within the parameter "reasons beyond the control of the Respondent as described under of Clause 13.1 of the Buyer Agreement.

- V. That during that time, a Writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "*Sunil Singh vs. Ministry of Environment & Forests Parayavaran*" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31.07.2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction. That on passing of the orders by the High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential for construction. The arrangement of water from distant places required additional time and money which resulted in the alleged delay and further as per necessary requirements STP was required to be setup for the treatment of the procured water before the usage for construction which further resulted in the in alleged delay. That in addition to this, labour rejected to work using the STP water over their health issues because of the pungent and foul smell coming from the STP water as the water from the S.T.P of the State/Corporations had not undergone proper tertiary treatment as per prescribed norms.
- VI. That the respondent had issued the said letter because occupation certificate was already applied for by the respondent and the same was also received by the respondent on 16.08.2017.
- VII. That the complainant was already offered fit-out for possession on 10.03.2017 as the respondent had applied for OC and was expecting to

- receive the same, therefore, the complainant was well informed that the project in question was complete in all respect. That after the receipt of OC, the complainant got in touch with the respondent and got the buyer's agreement executed so that the remaining possession formalities and conveyance deed be also executed.
- VIII. That since the size of the unit in question allotted to the complainant was reduced by 62 sq. ft., the complainant was not ready to execute the buyer's agreement despite the assurance that the amount obtained due to reduction of the area shall be refunded to the complainant.
- IX. That somehow the respondent convinced the complainant for the execution of the buyer's agreement but the complainant wanted a settlement for the reduction in area as the complainant was willing and interested in the original size allotted to him.
- X. That since the complainant is merely an investor and he realised that there will be no more assured return paid since possession is offered, the complainant refused to take the possession of the unit in question and the same is being maintained at the cost of the respondent till date.
- XI. That the respondent had sent an email dated 10.01.2019 wherein it was specified by the respondent that the respondent has already started offering possession for the units and the respondent was in continuous communication with the complainant to resolve the issue of reduction in the area of the unit in question.
- XII. That again on 24.01.2020 the respondent had informed the complainant to take the possession of the unit based upon the provisions of the MOU and the buyer's agreement. That the complainant is a pure investor and therefore, after the construction of the building was complete, the complainant wanted to reap more

- benefit from the respondent and was thus, not settling the matter with the respondent despite offer of possession.
- XIII. That the complainant was well aware about the reduction of the area of the unit in question vide allotment letter dated 27.08.2014 as well as a letter sent by the respondent to the complainant dated 23.11.2018 wherein the complainant was duly informed that the area of the unit of the complainant has been reduced from 1150 sq. ft. to 1088 sq. ft. and the amount for the reduced area shall be settled in future.
- XIV. That the complainant was well aware and well informed that the possession was already offered to the complainant and the said fact is a well admitted fact because the complainant was raised with the property tax which gets levied only after the building gets complete and the possession gets offered to the allottees. The complainant was only harassing the respondent thereby not taking and accepting the offer of possession and therefore, the complainant was again offered the possession on 18.01.2022 and even tried for settlement through the broker of the complainant.
- XV. That the broker of the complainant on 20.01.2022 wrote an email to the complainant for initiation of settlement for both the units of the complainant.
- XVI. That there was a change in the zoning plan due to which the land owner company, i.e., Seratum Land and Housing Pvt Ltd ("Seratum") had sent a letter regarding the approval from Director General Town and Country Planning Haryana vide letter dated 14.03.2014 wherein it was also requested grant of Occupation certificate and to deposit compounding charges as per prevailing policies along with a report from DTCP dated 04.03.2014.

XVII. That on 22.05.2014 a letter from DTCP, Haryana was received by the Seratum wherein the amount of the compounding fees was informed and vide letter dated 06.09.2014, Seratum informed DTCP regarding payment of the requisite fees along with the details. That again the respondent as well as Seratum vide letters dated 17.11.2014 and 21.04.2016 respectively requested for grant of occupation certificate but the same was issued by the statutory authority on 16.08.2017. That the final approval of the building plans/ zonal area was received by the respondent on 24.01.2017 by the DTCP, Haryana. That the respondent has acted in complete bonafide manner but due to the internal working at the DTCP, the Occupation Certificate was issued with delay.

XVIII. That under Section 32 of the Act, this Authority has an obligation to balance the ends of justice and to protect the interest of the genuine allottees, promoter and real estate agents.

XIX. That recently in the matter titled as M/s Vatika Ltd. vs Vinod Aggarwal bearing Appeal no. 647 of 2021, the Hon'ble Haryana Real Estate Appellate Tribunal was pleased to issue a stay order upon the order passed by the Authority for grant of assured returns. It is submitted that the counsel for the promoter raised issues that the Authority does not have the jurisdiction to grant assured returns and also that the delayed possession interest has been wrongly awarded even for the period where assured return has already been paid to the allottee. Thus, the Hon'ble HREAT granted stay on the impugned order to consider the issues raised by the Promoter.

12. All other averments made in complaint are denied in toto.

13. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of those undisputed documents and submissions made by the parties.

E. Written submission made by both parties:

14. The complainant has filed written submission on 02.06.2025 and the respondent has filed written submission on 05.06.2025. No additional fact apart from the complaint or reply has been stated in written submissions.

F. Jurisdiction of the authority:

15. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

F.II Subject-matter jurisdiction

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

Section 11.....

(4) 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.

18. 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.

G. Findings on the objection raised by the respondent:

G.1 Objection w.r.t force majeure circumstances.

19. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure circumstances such as orders/ restrictions of the NGT in NCR as well as competent authorities on account of environmental clearance, ban on construction by the orders of the Hon'ble Supreme Court and other courts, it could not speed up the construction of the project, resulting in its delay. All the pleas advanced in this regard are devoid of merits. Firstly, the due date of possession as per clause 11.A of the buyer's agreement dated 09.08.2018, the construction of the unit was to be completed on or before 09.08.2021. Further, as per HARERA notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 09.08.2021 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date for handing over of

possession comes out to be 09.02.2022 (including grace period) and grace period of 6 months on account of force majeure has already been granted in this regard. Thus, no period over and above grace period of 6 months can be given to the respondent-builders and it is well settled principle that a person cannot take benefit of his own wrongs.

H. Findings on the relief sought by the complainant:

H.I Direct the respondent to deliver the possession and to pay the interest for every month of delay at the prevailing rate of interest;

20. Upon consideration of the documents available on record and submissions made by both parties. The Authority observes that, the complainant-allottee had applied for a booking of office space in project namely "Floreal Towers" being developed by respondent and entered into MoU (memorandum of understanding) on 19.12.2009, wherein the respondent has agreed to allot an office space admeasuring tentative super area of 1150 sq. ft. @ Rs.2,740/- per sq. ft. of the super area amount to a total consideration of Rs.31,50,000/- which the complainant already paid entirely till July, 2008 i.e., before entering into MoU with respondent. Further as per clause 2 of MoU dated 19.12.2009, upon receipt of consideration of Rs.31,50,000/-, the respondent has agreed to pay investment return @ Rs.60/- per sq. ft. per month to the complainant-allottee with effective from 01.03.2010 till the date the project is complete or till physical possession hand over at site, whichever is later. The clause 2 is reproduced for reference:

2. After receipt of consideration of Rs.31,50,000/-, the developer shall give an investment return @ 60/- per sq. ft. per month i.e., Rs.69,000/- with effect from 01.03.2010 on or before 7th day of every month. That the construction of the project is likely to take two years effective 01.03.2010. If the construction of project is delayed by more than 2 years starting from the date of 01.03.2010, the developer shall continue to pay return @ Rs.60/- per sq. ft. per month i.e., Rs.69,000/- till the date the project is complete or till physical possession handover at site whichever is later.

21. Thereafter, on 27.08.2014, vide an allotment letter, the complainant-allottee was allotted a unit/office space bearing no. 1103, 11th floor, in Tower-B admeasuring 1088 sq. ft. super area in project namely "Floreal Towers" being developed by M/s Orris Infrastructure Private limited. Subsequently, the complainant-allottee and respondent had entered into buyer's agreement on 09.08.2018 and as per clause 27, it is agreed between both parties that the said builder buyer's agreement along with its annexures and the terms and conditions contained in the application form, shall constitutes the entire agreement between the parties with respect to the subject matter herein and shall supersedes and extinguish all prior allotment letter, correspondences, arrangements whether written or oral, if any, entered inter-se the parties. It is further agreed and clarified that in case of the assured return plan cases all the terms and conditions mentioned in the Memorandum of Understanding (if any) executed between the respondent company and the allottee(s) shall be concurrent and coterminous with the terms and conditions of the present builder buyer's agreement and in the event of any inconsistency between any of the terms and conditions, the terms and conditions of the memorandum of understanding shall override and prevail. The relevant clause 27 is reproduced for reference:

27. Entirety

This Builder Buyer's Agreement along with its annexures and the terms and conditions contained in the application constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all Allotment Letter, correspondences, arrangements whether written or oral, if any, between the parties. The terms and conditions of the Allotment Letter shall continue to prevail and be binding on the Allottee(s) save and except in cases where the terms and conditions of the Allotment Letter are at variance with the terms and conditions of this Builder Buyer's Agreement in which cases the terms and conditions of this Builder Buyer's Agreement shall prevail and shall supersede those terms and conditions contained in the Allotment Letter. This Builder Buyer's Agreement or any provision hereof cannot be

orally changed, terminated or waived. Any changes or additional provisions must be set forth in writing in a separate Agreement duly signed by and between the parties. It is however clarified that in the Assured Return Plan cases all the terms and conditions mentioned in the Memorandum of Understanding (if any) executed between the Company and the Allottee(s) shall be concurrent and coterminous with the terms and conditions of the present Builder Buyer's Agreement and in the event of any inconsistency between any of the terms and conditions, the terms and conditions of the Memorandum of Understanding shall override and prevail.

22. In the present complaint, the complainant is seeking possession along with interest for every month of delay at prevailing rate of interest. However, during proceedings dated 04.01.2024, 27.03.2025 and 22.05.2025, the counsel for the complainant requests for payment of delay possession charges as well as assured returns in terms of MoU. Despite making several requests during the proceedings and given ample opportunities, the complainant has not filed any application for amendment in relief claimed during proceedings till the date order is pronounced. Therefore, the Authority deems that the complainant does not want to amend the relief and want to continue with the reliefs as prayed in the present complainant. Thus, the Authority have no other options but to proceed with the reliefs as prayed in the present complaint.

23. In the present complaint, 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. Sec. 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]

24. Clause 11.A of the buyer's agreement provides for handing over of possession and is reproduced below:

11.A Schedule for Possession of the said unit

"The company based on its present plans and estimates and subject to all just exceptions, contemplates to handover the possession of the building/said unit within the period of 36 months from the date of the builder buyer's agreement by the company unless there shall be delay or there shall be failure due to reasons mentioned in clauses..."

[Emphasis supplied]

25. **Due date of possession:** The due date of possession of the unit as per clause 11.A of the buyer's agreement is to be calculated as 36 months from the date of execution of buyer's agreement i.e., 09.08.2018. Therefore, the due date of possession comes out to be 09.08.2021. Further, as per HARERA Notification no.9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 09.08.2021 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 09.02.2022 (including grace period).

26. On the other hand, the respondent contended that it had applied for grant of occupation certificate on 21.04.2016 and occupation certificate of the project was received from the competent authority on 16.08.2017. However, the offer for fit-outs was issued to the complainant-allottee on 10.03.2017 i.e., after application for grant of occupation certificate and offer for physical possession was issued on 12.03.2020 i.e., after receipt of offer of possession.

27. It is observed that the respondent has paid assured returns to the complainant till December, 2016 and adjusted the assured returns for period of 3 months [January, 2017 to March, 2017] as mentioned in SoA

at annexed with OFP dated 12.03.2020 at 24 of additional documents submitted by respondent.

28. The Authority further observes that as per allotment letter dated 27.08.2014 and builder buyer's agreement dated 09.08.2018, the respondent reduced the super area by 5.39% and the super area was revised from 1150 sq. ft. to 1088 sq. ft. and it is specifically mentioned in Schedule-A of BBA, the basic sale price is revised from Rs.31,50,000/- to Rs.29,18,120/-, which was further revised to Rs.28,14,678/- as mentioned in SoA dated 12.03.2020 annexed with offer of physical possession letter dated 12.03.2020.
29. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the Authority is satisfied that the as per buyer's agreement dated 09.08.2021, the respondent-promoter has made offer of possession within stipulated period specified in BBA and no contravention for delay in completing the construction of the project is established. By virtue of the buyer's agreement executed between the parties, the possession of the unit was to be delivered 36 months from the date of execution of buyer's agreement. The builder buyer's agreement was executed between the parties on 09.08.2018. Therefore, the due date of possession comes out to be 09.08.2021. As far as grace period of 6 months as is concerned, the same is allowed. Accordingly, the due date of possession comes out to be 09.02.2022 (including grace period). The occupation certificate was granted by the competent authority on 16.08.2017 i.e., before entering into buyer's agreement and physical possession of the subject unit was offered to the complainant on 12.03.2020. The Authority is of the considered view that there is no delay on the part of the respondent in offering the possession of the subject unit to the complainant-allottee and there is no failure on part of the

respondent-promoter to fulfil its obligation and responsibilities as per the buyer's agreement dated 09.08.2018. Accordingly, there is no equity in favour of the complainant is established and hence, no case for delay possession charges is made out and the relief with respect to delay possession charges is hereby dismissed in devoid of merits.

30. It is further observed by the Authority that as per clause 2 and 5 of MoU dated 19.12.2009 and clause 11.B of BBA dated 09.08.2018, the complainant-allottee can take physical possession of the unit/office space after completion of the building and upon obtaining of occupation certificate. Further, as per Section 19(10) of the Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. However, in the present complaint, the occupation certificate was obtained 16.08.2017. The respondent has offered the possession of the unit in question to the complainant on 12.03.2020 i.e., after receipt of occupation certificate, so it can be said that the complainant shall come to know about the occupation certificate only upon the date of receipt of offer of possession.

31. Keeping in view of the above, the respondent-promoter is under obligation to handover over the physical possession of the subject unit to the complainant-allottee as per specifications mentioned in the buyer's agreement entered between the parties within a period of 60 days from the date of this order and the complainant is also obligated to take the possession of the allotted unit after making payment of outstanding dues, if any.

H.II Direct the respondent to pay compensation and damages for mental, financial and physical harassment of Rs.20,00,000/-.

32. The complainant is seeking above mentioned relief w.r.t payment of compensation and damages for mental, financial and physical



harassment. The Hon'ble Supreme Court of India in civil appeal no.6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.* (supra) has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and litigation costs.

I. Directions of the authority

33. 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-promoter is directed to handover the physical possession of the unit/ office space within a period of 60 days from the date of this order. The complainant is also obligated to take possession in terms of Section 19(10) of the Act, 2016.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, offer of possession, total sale consideration and amount paid by the complainant is mentioned in each of the complaints.
35. Complaints stand disposed off accordingly.
36. True certified copy of this order shall be placed in the case file of each matter.
37. Files be consigned to registry.

Dated: 24.07.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram