

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

Complaint no. : 3206 of 2023
Date of filing : 13.07.2023
Date of decision : 12.08.2025

Rekha Kakkar & Ajit Kumar Kakkar
R/o: A-2/211 Golf Course Road, Sector 17,
Dwarka, New Delhi

Complainant**Versus**

M/s Anand Divine Promoters Pvt. Ltd.
Registered Address: 711/92 Deepali Nehru
Place, New Delhi

Respondent**CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member****APPEARANCE:**

Sh. Arjun Goel (Advocate)
Sh. Vinayak Gupta (Advocate)

**Counsel for Complainant
Counsel for Respondent****ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Triumph
2.	Project location	Sector 104, Gurugram, Haryana
3.	Project type	Residential Group Housing Project
4.	DTCP License	63 of 2011 dated 16.07.2011 valid up to 15.07.2019 10 of 2012 dated 03.02.2012 valid up to 02.02.2020
5.	Allotment letter dated	Not provided on record
6.	Date of apartment buyer agreement	02.06.2020 (As per page no. 47 of the complaint)
7.	Unit no.	7PH2 on 27 th floor, Tower- 7 (As per page no. 48 of the complaint)
8.	Unit area admeasuring	4781 sq. ft (As per page no. 48 of the complaint)
9.	Possession clause	18. <i>Barring unforeseen circumstances and Force Majure events as stipulated hereunder, the possession of the said Apartment is proposed to be, offered by the Company to the Allottee on or before 31 Dec 2020, plus 3 months of grace period from the date of this agreement, subject always to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration fees and other charges as stipulated herein or as may be demanded by the Company from time to time in this regard.</i>
10.	Due date of possession	31.03.2021 (Calculated from the BBA) (Grace period of 3 months is allowed)

11.	Total sale consideration	Rs. 3,18,00,000/- (As per page no. 50 of the complaint)
12.	Amount paid by the complainant	Rs. 3,26,63,243/- (As per receipts per page 71-77 of complaint)
13.	Occupation certificate	29.05.2019 (As per DTCP website)
14.	Offer of possession	08.06.2020 (As per page no 48 of the reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. The Complainants are aggrieved allottees who had, in January 2020, booked Apartment No. 7PH2 on the 27th floor in Tower No. 07 hereinafter referred to as "Flat" and for provisional allotment of car parking spaces No. 04 (Four) of the "ATS Triumph" project hereinafter referred to as "Project", situated in village Dhanwapur, falling in Sector 104, Gurugram, Haryana being constructed and developed by the Respondent, the possession whereof was undertaken to be delivered to the Complainants on or before December 31, 2020. Despite the lapse of more than two years from the promised date of possession, the Respondent has failed to deliver possession of the Flat to the Complainants, in contravention of the terms and conditions of the agreement as well as understanding between the parties.
 - b. The present complaint is being filed under Section 31 read with Section 18(1)(a) and Section 19(4) of the Real Estate (Regulation and Development) Act, 2016 hereinafter referred to as "Act" as well as Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017

- (Rules) seeking possession of the Flat as well as payment of interest for the delay in handing over possession by the Respondent.
- c. The Complainant No. 1 is Food Expert and the Complainant No. 2 is a retired Air forces professional who have rendered services to the Govt of India for several years. The Complainants, desirous of owning their own home, were enticed into purchasing the Flat in the Project owing to the misrepresentations of the Respondent herein, as further detailed hereunder. The Respondent is a real estate company incorporated under the provisions of the Companies Act, 1956, and, as per the details mentioned on their official website www.atsgreens.in, is involved in the construction of residential and commercial projects. In January 2020, the Complainants came across Respondent's advertisement for the sale of flats in a building/project named "ATS Triumph" situated in village Dhanwapur, falling in Sector 104, Gurugram, Haryana i.e. the Project. Upon enquiry, the Respondent shared a brochure containing the details of the Project, which brochure specified that the apartments in the Project were in the "ready to occupy" stage.
- d. Following discussions, the representatives of the Respondent shared a preliminary cost-sheet with the Complainants, which stated that the Flat sought to be purchased by the Complainants would be ready for possession by December 31, 2020. This date of possession was contrary to the representation contained in the advertisement and brochure shared by the Respondent, which stated that the Flat would be "ready to occupy".
- e. It is submitted that the Complainants were enticed into purchasing the Flat by the false representations contained in the Respondent's brochure regarding the stage of completion of the Project. It is also submitted that the Respondent's misrepresentations in its brochure also amount to an

unfair trade practice, which is punishable under the Act. The respondent was fraudulently engaged in these promotion activities on a global level. To assuage the Complainants' concerns regarding the stage of completion of the Project, the Respondent's representatives assured the Complainants that the Flat would be ready by the aforementioned date i.e. December 31, 2020. Based on the Respondent's representations, the Complainants proceeded to apply for Allotment of the Flat in the Project via Application No. 523 dated 12.12.2019.

- f. Cumulatively, a total booking amount of INR 31,48,200/- was paid by the Complainants to the Respondent, including an amount of INR 31,482/- paid towards TDS. Thereafter, a Buyer Agreement dated January 02, 2020 was executed between the Respondent and the Complainants, whereby it was confirmed that the Flat i.e. a residential apartment having Super Area of approx. 4781 Sq. Ft. (444.16 Sq. Mt.) which includes Carpet Area of 3165 Sq. Ft. (294.03 Sq. Mt.), along with terrace area of 1813 Sq. Ft. being Unit/Apartment No. 7PH2 on 27th Floor in Tower 7 with 4 exclusive covered/open car parking in the Project, stood provisionally allotted to the Complainants hereinafter referred to as "Agreement/BBA" for a consideration of INR 3,18,00,000.
- g. Under Clause 5 to the Agreement/BBA, the Respondent acknowledged the receipt of INR 31,48,200/- (including the payment made towards TDS) deposited by the Complainants in the manner detailed above. As per Clause 18 of the Agreement, the possession of the Flat was to be handed over to the Complainants latest by December 31, 2020, with the only condition being timely payment of dues by the Complainants.
- h. The Complainants availed a home loan from State Bank of India (Bank) for assistance in purchase of the Flat. The loan amount of INR 2,08,00,000/-, the bank dispensed INR 1,88,89,200/- which was directly

deposited by the Bank into the Respondent's account on 03.03.2020. The aforesaid payment has been duly acknowledged by the Respondent by way of various receipts issued in the name of Complainants.

- i. Upon payment of the aforesaid amount, the payment obligations of the Complainants prior to grant of possession, as provided under the Agreement, stood satisfied.
- j. It is pertinent to note that, the complainant had made more than 100 % payment of the said sale consideration value for the flat dated 09.10.2020 as last payment done to the respondent and thereby the possession of the said flat was to be handed over to the complainant on or before 31.12.2020. however, the same was never given to the complainant till date and the Respondent never made an effort to hand over possession of the Flat to the Complainants which is itself a breach of clause 18 of the agreement/BBA.
- k. Though the Complainants made timely payments, the Respondent has failed to deliver possession of the Flat as per the promised timeline i.e., 31.12.2020 as per the Agreement. The Complainants repeatedly followed up with the Respondent's officials regarding the status of their Flat, and highlighted the additional expense in the form of monthly rent being incurred by them as retired pensioners.
- l. Furthermore, the Complainant no.2 after making the more than 100% payment to the respondent, requested the respondent to handover the peaceful possession of the flat, the respondent requested the complainant for 90 days more time for handing over the peaceful possession of the flat i.e. by 02.02.2021. however, the same was never done by the respondents till date.
- m. That the complainants had visited the apartment on 11.01.2021 and found that the work in the apartment was not even started. After seeing

the scenario, the complainant was shocked. The respondents backed out from their promises, violated the terms of contracts, caused mental agony, caused difficulty in life settlement and disturbed household and harmony of the complainant. That the complainant had also visited the corporate office of the respondent and met personally to Ms Jyoti Anand and the complainant apprised the respondent team official that "I am staying in rented house and paying huge rental for my residence Rs 49,000/- per month and I have taken loan on this penthouse and bearing the EMI of Rs 2,00,000/- as well apart from my own saving money".

- n. Despite the aforesaid circumstances, the Respondent failed to offer possession of the completed Flat to the Complainants. The Complainants addressed repeated emails and made several calls to the Respondent's officials, which did not yield any results.
- o. Being aggrieved by the conduct of the Respondent, the Complainant No.2 issued a Legal Notice dated 24.05.2021 to the Respondent for handing over of possession of the Flat. Being aggrieved the complainants on 29.06.2021 requested and coordinated with one Mr. Getamber Anand for the said delivery of the flat on Whatsapp, the respondents again sought more time.
- p. That the Respondent obtained an occupation certificate (OC) for the Project, and thereafter began handing over possession to allottees of the apartments therein. However, no possession was granted to the Complainants, despite delay of almost more than 2 years from the delivery timeline. From the aforesaid, it is evident that the Complainants have made payment of all amounts payable by them to the Respondent under the Agreement, and are thus, in compliance with all of their obligations thereunder. However, the Respondent has failed in its obligation to deliver possession of the Flat to the Complainants.

- q. The Complainants have patiently waited for delivery of possession of the Flat for more than past 2 years, under the belief that the delivered Flat would be in terms of the specifications contained in the Agreement and the facilities/amenities offered in the project would be as per the understanding between the parties. However, the Complainants have recently learned that some of the allottees who have been granted possession of their apartments in the Project.
- r. In view thereof, it is evident that the quality of the Flat, even if it is delivered to the Complainants, will be sub-par and cause difficulties and further hardship to the Complainants. Accordingly, the Complainants submit that they are entitled to compensation for the Respondent's failure to adhere to sanctioned plans, layout plans and specifications as approved and as disclosed to them at the time of execution of the Agreement.
- s. It has also come to the Complainants' attention that the website of the Respondent shows that the OC for the Project is available with the Respondent. Further, the Respondent is still enticing the general public to buy the apartments in the said project on the basis of the said OC. In view of the above, it is evident that the Respondent has severely delayed the delivery of possession of the Flat to the Complainants, contrary to the terms and conditions of the Agreement. The conduct of the Respondent, as highlighted above, seems to indicate an intention to appropriate the funds deposited by the allottees towards purposes other than the construction and timely delivery of the Project. The delay caused by the Respondent in handing over the possession of the Flat has caused considerable financial hardship, harassment, and mental distress to the Complainants, who have invested their life savings in the Project and have had to face the additional rental burden for the past 2 years, with no

guarantee on when the possession will ultimately be granted. Accordingly, the Complainants are entitled to be granted possession of the Flat at the earliest, and in any event, within such time as may be prescribed by this Hon'ble Authority in this regard.

- t. It is submitted that, as per Clause 19 of the Agreement, any delay in handing over possession by the Respondent entitles the Complainants to interest/compensation at the rate of 10% per annum on the amounts already paid under the Agreement. Builder buyer agreement annexed above. It is further submitted that Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either: (i) in terms of the agreement for sale or to complete the project by the date specified therein; or (ii) on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason. In the aforesaid circumstances, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest for every months' delay in handing over possession at such rate as may be prescribed in this behalf. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.
- u. The unqualified right of the allottee to seek a refund under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It is an unconditional absolute right granted to the allottee to seek payment of interest, if the promoter fails to give possession of the apartment, plot or building within the time

stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which delay is not attributable to the allottee/home buyer.

- v. Accordingly, the Complainants are filing the present Application seeking interest for the delay in handing over possession as well as compensation for failure to comply with the terms of the Agreement. That in the case of kavita Singh VS Anand divine Developers PVT. LTD. CR/170/2021 dated 11.03.2022 passed by division bench of Hon'ble Member Shri Vinay Kumar Goyal and Hon'ble Chairman Dr. KK Khandelwal, the Hon'ble Court held the respondents liable for not delivering the flat possession on time, also, the Hon'ble Court had granted compensation for mental harassment, litigation cost as well as interest in delay possession to the complainants.
- w. The cause of action for the present complaint first arose on 31.12.2020, when the possession was not granted by the Respondent. The cause of action thereafter arose on 02.02.2021 when the Respondent yet again failed to offer possession to the Complainants. The cause of action further arose on 24.05.2021 when Complainant No. 2 issued a Legal Notice to the Respondent. The Cause of action has continued till the date of filing of this complaint as the Complainants have not been given possession of the Flat nor any intimation has been given by the Respondent regarding the delay in the offer of possession. The cause of action is a continuous one and continues to subsist, and will subsist till the time relief as sought is granted.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- a. Direct the respondent to hand over possession of the flat to the complainants within such time as may be prescribed by this Hon'ble Authority in this regard.
 - b. Direct the respondent to make payment of interest for delay in handing over possession at 24% per annum on the total amount paid to the respondents for the flat which is paid by the complainants to the respondent under the agreement.
 - c. Direct the respondents to pay the litigation cost of ₹1,50,000/- in favour of the complainant.
 - d. Direct the respondent to pay the compensation of ₹50,00,000/- on account of mental agony and physical harassment caused to the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds.
- a. That it is submitted that the complainant was allotted unit i.e. Unit No. 7PH2, 27th Floor, Tower No. 7 admeasuring 3165 Sq. Ft. After allotment letter issued to the complainant on 26.12.2019, Buyer Agreement was executed between the parties on 02.01.2020, according to which, the complainant was supposed to pay total amount of Rs. 3,18,00,000/-. But, contrary to above, the complainant preferred to file instant complaint seeking/praying for possession along with interest on delay possession. This clearly shows ill intention of the complainant of enjoying the property in question on one hand and on the other hand filing meritless, baseless and frivolous cases on the other hand.

- b. That the complainant, after checking the veracity of the project namely, 'ATS Triumph', Sector 104, Gurugram had applied for allotment of a residential unit and aged to be bound by the terms and conditions of the documents executed by the parties to the complaint. It is submitted that based on the application of the complainant, Unit No. 1162, 16th Floor, Tower No.1 admeasuring 2290 Sq. Ft. was allotted to the complainant by the respondent.
- c. That the Buyer's Agreement was executed on 02.01.2020. It is pertinent to mention herein that the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act") was not in force when the Agreement was entered into between the complainant and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.
- d. That it was agreed that as per Clause 4 of the Buyer's Agreement, the consideration of Rs. 3,18,00,000/- was exclusive of other costs, charges including but not limited to EDC/IDC Charges, Maintenance Deposit, Power Back up, Electricity Meter Charges, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities. As per Clause 12 of the Buyer's Agreement, timely payment by the complainant of the Basic Sale price and other charges as stipulated in the Payment plan was to be the essence of the agreement.
- e. That the respondent after completing the construction of the unit in question, applied for the grant of the Occupation Certificate on 03.10.2016 and the same was granted by the concerned authorities on 28.05.2019. The respondent offered the possession of the unit to the complainant immediately vide letter dated 07.06.2019. That after receiving Occupation Certificate on 30.05.2019, the answering

respondent company sent offer of possession of the unit in question to the complainant vide communication dated 08.06.2020 subject to clearing outstanding payable amount.

- f. That it is pertinent to state that the complainant has already been offered possession by the respondent company vide communication dated 08.06.2020, hence how can the complainant demand for interest on delayed possession? Complainant is now deliberately trying to unnecessarily harass, pressurizing the respondent to submit to the unreasonable demands.
- g. That complainant was intimated to pay the outstanding amount as per agreed terms and conditions as specified in Clause 12 of Builder Buyer Agreement dated 02.01.2020, on the failure of which the delay penalty amount would accrue. Various communications were sent to the complainant by the respondent company asking him for clearing the outstanding amount and taking the possession of the unit. The complainant has not been coming forward to take the possession of the unit after remitting the due amount. The complainant is bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges.
- h. That the complainant has mislead this Ld. Authority by placing on record selective e-mails exchanged with the respondent only with an intent to deceive both the respondent company and this Ld. Authority. That the complainant is still bound to pay outstanding amount against the booked unit to the respondent company. That the complainant is a real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and they are now deliberately trying to unnecessarily harass,

pressurize and blackmail the respondent to submit to his unreasonable demands.

- i. That despite the abovementioned illegal conduct of the complainant the respondent company submits that the same is ready and willing to execute Conveyance Deed with the complainant. The Respondent Company denies all allegations of the Complaint as if set out herein ad seriatim and specifically denied unless specifically admitted hereinafter.
- j. That the complainant is a well-educated person who had made the booking with the respondent in its project on the basis of his own free will, understanding and estimations. The complainant had made the booking only after reading, understanding and verifying the terms and conditions stipulated therein. Thus, the question of enticing the complainants towards purchasing the flat in question by the answering respondent does not arise at all. The complainant had made the booking only after reading, understanding and verifying the terms and conditions stipulated therein. The complainant had also inspected and had satisfied himself with the ownership record and the documents relating to the title of the land, building plans, permits/ license/ consent for construction of the project and the legal rights of the respondent.
- k. The complainant had confirmed to the respondent that he had entered into the agreement with full knowledge of all the laws, rules, regulations, notifications etc. applicable to the said development and the terms and conditions contained in the agreement and that he had clearly understood his duties, rights, responsibilities and obligations under each and all sorts of the agreement and it had agreed to abide by the same. The complainant is bound to adhere to the terms and conditions of the allotment instead of raising such baseless and untenable demand.

1. That it is submitted that the complainant was intimated to pay the outstanding amount as per agreed terms and conditions as specified in Clause 12 of Builder Buyer Agreement dated 28.08.2014, on the failure of which the delay penalty amount would accrue. Various communications were sent to the complainant by the respondent company asking him for clearing the outstanding amount and taking the possession of the unit. The complainant has not been coming forward to take the possession of the unit after remitting the due amount. The complainant is bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

9. 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.

E. II Subject-matter jurisdiction

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

Section 11(4) (a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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) 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.

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 relief sought by the complainant.

F.I. Direction to the respondent to hand over possession of the flat to the complainants within such time as may be prescribed by this Hon'ble Authority in this regard.

F.II. Direction to the respondent to make payment of interest for delay in handing over possession at 24% per annum on the total amount paid to the respondents for the flat which is paid by the complainants to the respondent under the agreement.

12. The complainant intends to continue with the project and are seeking delay possession charges interest on the amount paid. 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:

*"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, -
in accordance with the terms of the agreement for sale or,
as the case may be, duly completed by the date specified therein; or*

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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)

13. Clause 18 of the BBA provides for handing over of possession and is reproduced below:

"Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the Company to Allottee on or before 31 Dec 2020, plus three months of grace period from date of this agreement, subject always to timely payment of all charges including basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard"

14. **Due date of possession and admissibility of grace period:** As per clause 18 of the BBA, the possession of the allotted unit was supposed to be handed over before 31.12.2020. A grace period of 3 months is allowed being unqualified. Accordingly, the due date of possession comes out to be 31.03.2021. The occupation certificate for the project has been obtained from the competent authority on 29.05.2019.
15. **Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. 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]
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.

16. 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.
17. 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., 12.08.2025 is **8.90%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.90%**.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
20. 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 18 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.03.2021.
21. The complainant has sought relief of possession, notwithstanding the fact that the respondent purportedly offered possession of the subject unit on 08.06.2020, subsequent to the receipt of the occupation certificate from the competent authority on 29.05.2019. Upon examination, the Authority notes that despite the lapse of more than six years from the date of offer of possession, the respondent has failed to complete the unit, as evident from the respondent's own communication dated 02.11.2022, wherein additional time of 3-4 months was sought. Also, the Authority appointed LC in the said matter to check where the unit is in habitable condition or not. As per the LC report dated 26.06.2025 the unit is still not complete. The relevant para of the LC report is reproduced as under:

"The flooring has been done in the unit of the complainant with Italian marble and wooden flooring in the bedrooms, but in the lobby area 2 different design of Italian flooring has been installed, that results in mismatch of flooring design. Cracks in the Italian marble used in the stairs has been observed.

Wooden flooring has been done in the bedrooms, but the skirting at some part is missing and in one-bedroom wooden planks of flooring seems to be in loose condition as observed during the site visit.

The promoter has installed the UPVC windows in the unit but the fitting of the same is not done properly.

The promoter has completed the kitchen and wardrobes in the complainant unit.

The promoter has installed the sanitary wares and CP fitting in all the bathrooms of the complainant unit except look up mirror in 2 bathrooms and washbasin in 1 bathroom.

During the site visit centralized AC in lobby was not working and some tiles in swimming pool area found to be cracked as observed during the site inspection. The glass of the gate at the roof top was found broken.

Dampness is observed at 3-4 locations of the outer side of unit and some repair needs to be done at some point in external façade along with the repair in expansion joints. Some touch up of external paint is also required at 2-3 location.

Photographs captured at the time of inspection of complainant unit are attached herewith for reference please"

22. In light of the foregoing, the Authority is of the considered view that the offer of possession dated 08.06.2020 is rendered invalid, on the ground that the unit was not in a habitable condition at the time of such offer, notwithstanding the issuance of the occupation certificate. Accordingly, the offer of possession made by the respondent on 28.05.2019 stands set aside by the Authority for the reasons stated hereinabove
23. The Authority further holds that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the BBA. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
24. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 31.03.2021 till actual handing over of possession at prescribed rate i.e., 10.90% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
25. Since the unit has not yet been handed over by the respondent to the complainant till date and occupation certificate has already been received back in 2019 therefore, the respondent is further directed to hand over the actual physical possession of the unit to the complainants within a period of 1

month and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016, further within two months on payment of stamp duty and registration charges as applicable.

F.III. Direct the respondents to pay the litigation cost of Rs.1,50,000/- in favour of the complainant.

F.IV. Direct the respondent to pay the compensation of Rs.50,00,000/- on account of mental agony and physical harassment caused to the complainant.


26. In the above-mentioned relief, the complainant sought the compensation and Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1) RCR(C) 357), has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the authority

27. 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):
- The respondent is directed to pay interest at the prescribed rate of 10.90% p.a. for every month of delay from due date of possession i.e., 31.03.2021 till actual handing over of possession, as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - The respondent is further directed to hand over the actual physical possession of the unit to the complainants within a period of 1 month and execute conveyance deed in favour of the complainant in terms of section

17(1) of the Act of 2016, further within two months on payment of stamp duty and registration charges as applicable.

- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.90% 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.
 - d. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - e. The respondent shall not charge anything which is not the part of BBA.
28. Complaint stands disposed of.
29. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025