

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

Complaint no.: 3863 of 2024
Date of filing of complaint: 14.08.2024
Date of order: 11.09.2025

Rohit Harmesh Ghanara

R/o: G101, Army Flats, Sector-4, MDC,
Panchkula (Urban Estate), Haryana-134109

Complainant

Versus

Emaar MGF Land Private Limited.

Both having Regd. office at: ECE House 28,
Kasturba Gandhi Marg, New Delhi-110001

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Prashant Vashist (Advocate)

Sh. Ishaan Dang (Advocate)

Complainant

Respondent

ORDER

1. This order shall dispose of above-mentioned complaint 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.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the

possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Colonnade", Sector 66, Gurugram
2.	Nature of the project	Commercial colony
3.	Project area	2.25 acres
4.	DTCP license no.	163 of 2008 dated 19.08.2008 valid up to 18.08.2020
5.	Name of licensee	Logical Developers Pvt. Ltd
6.	RERA Registered/ not registered	156 of 2017 dated 28.08.2017 valid up to 31.01.2028
7.	Unit no.	CHC R-02-031, 2 nd floor (As per letter of offer of possession dated 11.10.2023 on page no. 140 of the reply) (Note: As per letter of offer of possession unit no. has been revised to CHC R-02-031, 2 nd Floor from CHC R-FF-031, First Floor)
8.	Unit area admeasuring	262.12 sq. ft. (Super area) (As 11.10.2023 on page no. 140 of the reply) (Note: As per letter of offer of possession area of the unit has been revised to 262.12 sq. ft. from the earlier area of 267 sq. ft.)
9.	Allotment letter	15.04.2015 (As per page no. 31 of the complaint)
10.	Date of buyer's agreement	30.08.2016 (As per page no. 36 of the complaint)
11.	Possession clause	16. POSSESSION (a) <i>Time of Handing over the possession:</i> (i) <i>The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all</i>

		<i>amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession")</i> (As per page no. 43 of the complaint)
12.	Date of start of construction	29.05.2017 (As per page no. 66 of the complaint)
13.	Due date of possession	August, 2020 (Note: Due date to be calculated 42 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
14.	Total sale consideration	Rs.21,19,935/- (As per payment plan on page no. 51 of the complaint)
15.	Amount paid by the complainant	Rs.6,36,637/- (As per SOA dated 09.08.2024 on page no. 121 of the reply)
16.	Payment request letter	08.05.2017, 28.06.2017, 20.07.2017 & 10.04.2019 (As per page no. 99-102 of the reply)
17.	Reminder letter	03.05.2019 & 24.08.2023 (As per page no. 96-97 of the reply)
18.	Occupation Certificate	31.03.2022 (As per page no. 137 of the reply)
19.	Offer of possession	11.10.2023 (As per page no. 140 of the reply)
20.	Pre-cancellation letter	16.01.2024 (As per page no. 145 of the reply)
21.	Cancellation notice	27.03.2024 (As per page no. 147 of the reply)
22.	Legal notice for possession	15.04.2024 (As per page no. 64 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

1. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Colonnade"

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situated at Sector-66", a commercial complex promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the advertisements, the complainant booked a commercial unit no. bearing no. FF-031 admeasuring 267 sq. ft. on 18.03.2012 and paid an amount of Rs.1,62,500/- as a booking amount.

- II. That after three years of taking the booking amount for the said unit, the respondent executed an allotment letter in favor of the complainant, wherein all the particulars of the unit being booked by the complainant along with the price and area of the unit was mentioned. As per the allotment letter the complainant was allotted a unit at a basic lease premium of Rs.6,500/- per sq. ft. exclusive of other charges EDC, IDC and PLC.
- III. That thereafter, on 30.08.2016, the respondent executed builder buyer's agreement with the complainant regarding the above said unit.
- IV. That as per clause 16 of the builder buyer's agreement, the respondent was supposed to handover the possession of the unit within 42 months from August 2016 along with an additional grace period of 4 months the said period expired on June 2020, whereas the respondent offered the possession on the above said unit on 11.10.2023, after a delay of 4 years from the period as have been stipulated in the builder buyer's agreement.
- V. That in the year 2021, the complainant came to know that the respondent is doing an alteration in the building plan of the project, which would be detrimental to all the unit buyers as the area would be reduced and there can be change in the allotted unit to all the

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allotees. Having this concern in mind, the complainant along with various other allottees wrote an email through one Naresh Dahiya to the STP Gurugram on 25.07.2021 raising all of their concerns.

- VI. That thereafter the complainant went on to meet the officials of the respondent at their office, various times, and the officials of the respondent gave their assurance to the complainant that their unit and area of the unit will remain unchanged and he will get the promised unit as per the builder buyer's agreement.
- VII. That the complainant received a letter of offer of possession on 13.01.2023 and to the utter shock and surprise to the complainant, the respondent have not only offered a delayed possession but have also changed the allotted unit from CHC R-FE-031 to CHC R-02-31 and the area of the shop was also reduced from 267 sq. ft. to 262.12.sq. ft.
- VIII. That after the receiving of the said letter of offer of possession the complainant approached the respondent asking for the offer letter of the unit which was originally allotted/purchased by him, the respondent again gave assurances to the complainant for the same and requested for some time in doing so.
- IX. That the complainant kept on calling and visited the office of the respondent several times during the said period and kept on insisting his demand of issuing an allotment letter for the initial booked unit and in return got the promises and assurances of the respondent company that he will get the original booked unit, in some time.
- X. That thereafter, the respondent unilaterally, illegally, arbitrarily and in total breach of the policies and laws in this regard and there

promises and assurances had cancelled the allotment of the unit of the complainant vide their letter dated 27.03.2024.

- XI. That after receiving of the said cancellation letter, it became crystal clear to the complainant that the respondent's intention was never there to give the allotted/purchased unit to the complainant but rather was to cheat and defraud the complainant and to usurp the money paid by the complainant to the respondent and in order of doing so they kept on giving false promises and assurances to the complainant. Further, the respondent had sent the letter of cancellation of the unit in order to threaten and to compel the complainant to take the possession of the changed unit and not to ask for the possession of their initial booked unit.
- XII. That the complainant did not succumb to the illegal ways adopted by the respondent and thereafter finding no alternative, complainant served a notice dated 15.04.2024 through their counsel upon the respondent demanding to offer the same unit to the complainant which was originally booked by him and to recall the cancellation letter.
- XIII. That the complainant has already made a payment of Rs.6,36,637/- to the respondent and is ready to make the remaining payment if, the respondent offers the possession of the unit which was originally booked by the complainant.
- XIV. That an amount of Rs.6,36,637/- has already been paid by the complainant out of the total amount and is ready and willing to pay the remaining amount to the respondent subject to getting his booked unit and after subtraction of the delayed possession compensation.

- XV. That the complainant requested the respondent to recall the cancellation of the unit and further requested to give the offer letter of possession of the unit initially booked by him and for which complainant was ready to pay the entire amount to the respondent. The respondent did not pay any heed to the request of the complainant.
- XVI. That is further submitted that the respondent arbitrarily without following the due procedure and illegally cancelled the unit of the complainant. This shows that intention of the respondent was to fraud the innocent complainant and grab his hard earned money which was already paid for the apartment to the respondent.
- XVII. That subsequent to receiving the information for the termination and cancellation of the unit, the complainant went to the office of the respondent, where the officials of the respondent refused to meet the complainant citing their unit has been cancelled and they are no more the customer of the respondent. It is further submitted that the respondent has not returned the amount of the money paid to the respondent after the cancellation of the unit to the complainant. That respondent cannot impose unfair, unilateral conditions upon the complainant.
- XVIII. That due to omission on the part of the respondent the complainant has been suffering from disruption on their working arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondent had offered the possession of the unit/shop originally booked by the complainant.
- XIX. That the respondent has delayed the construction of the said project and caused undue hardships for the complainant. At

present, the respondent is least worried about completing the construction work and handing over the possession to the complainant.

- XX. That the complainant is ready to make the payment of the balance consideration in full, however, from the arbitrary actions of the respondent it is clear that the respondent is in a hurry to cancel the allotment of the complainant without any justified reason with the malafide intent.
- XXI. That respondent company has never informed the complainant of the development of the stage of the project along with essential services, despite which has been demanding the amount of total consideration of the unit in question and raising the demands for payments.
- XXII. That the respondent company has utilized the deposited amount of complainant for sufficient time and now the respondent company is liable to interest @ 15% per annum. The complainant has also suffered mental tension and harassment due to callous attitude of respondent for which the complainant reserves his right to claim Rs.10,00,000/- from the respondent before the appropriate forum.
- XXIII. That despite of cancelling the unit allotted to the complainant, the respondent has been issuing the invoice in the name of the complainant for the supply of electricity.
- XXIV. That the cause of action for filing of the present complaint arose when the respondent issued the allotment letter. The cause of action subsequently arose on multiple occasions when the complainant made requests to the respondent to make the payment of the outstanding amount. The cause of action arose when the respondent cancelled the unit of the complainant in the
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said project. The cause of action is continuous one and still subsisting, hence the present complaint.

XXV. That despite several attempts of the complainant, the respondent is least interested in doing justice or working as per law. That the respondent had taken more than 20% amount towards the unit/shop and has illegally and arbitrarily cancelled the unit of the complainant in violation of the provisions of law and has committed breach of contract. The complainant being left with no other alternative, is forced to file the present complaint to revive the unit.

XXVI. That the complainant prays for physical possession of the unit after making the due payment till date. Further, it is pertinent to mention here that the respondent have delayed the construction of the said project and caused undue hardships for the complainant.

C. Relief sought by the complainant:

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

- i. Direct the respondent to withdraw cancellation letter dated 27.03.2024.
- ii. Direct the respondent may kindly be to restore the allotment of unit apartment bearing no. CHC R-FF-031 having a super area of 267 sq. ft. in the project which was illegally and unilaterally changed to (CHC R-02-031) by the respondent vide its offer letter of possession.
- iii. Direct the respondent to execute the agreement to sell/ builder buyer's agreement with the complainant for the mentioned unit.
- iv. Direct the respondent not to sell the said unit to any third party before the decision of the present complaint or create any kind of third party rights.

- v. Direct the respondent to accept the outstanding payment till date of the said unit in question which the complainant is ready to pay as per Act of 2016.
- vi. Direct the respondent to handover the peaceful possession of the unit bearing (CHC R-FF-031) having a super area of 267 sq. ft.
- vii. Direct the respondent to pay delayed possession charges @15% per annum (compoundable) from the date of each payment made by the complainant may kindly be awarded in favour of the complainant and against the respondent till the physical hand over of the possession of the unit.
- viii. Direct the respondent to execute the conveyance deed for the said unit in favour of the complainant after obtaining the OC from the government department.
- ix. Direct the respondent not to charge the maintenance and interest on the delayed payment from the complainant till the actual handover of the possession of the unit.
- x. Direct respondent to provide the cost of present litigation amounting to Rs.1,00,000/-.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
- a. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Hon'ble Authority and can only be adjudicated by the Civil

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Court. The present complaint deserves to be dismissed on this ground alone.

- b. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 30.08.2016, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of the Hon'ble Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondent as well as the complainant thereunder.
- c. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- d. That the complainant is not "Allottee" but is actually investor who had purchased the unit in question as a speculative investment. Moreover, insofar the unit in question is concerned, the complainant was lessee in respect of the same and not owners. Thus, the complaint is not maintainable in law.
- e. That the complainant had approached the respondent and expressed his interest in booking a commercial unit in the commercial project being developed by the respondent known as "Colonnade" situated in Sector 66, Gurugram. Prior to making the booking, the complainant had conducted extensive and independent enquiries with regard to the project and it was only

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after he was fully satisfied about all aspects of the project, that the complainant took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- f. That the complainant had been provisionally allotted unit no. CHC R-02-031 (previously unit no. CHC R-FF-031), admeasuring 267 sq. ft approx. (super area) vide provisional allotment letter dated 15.04.2015. The complainant had opted for a construction linked payment plan. The buyer's agreement was executed between the complainant and the respondent on 30.08.2016.
- g. That the complainant had opted for a construction linked payment plan in terms of which after booking, the instalments were payable upon achievement of the construction milestone indicated in the payment plan. Although the complainant had agreed and undertaken to make timely payments in accordance with the payment schedule but the complainant defaulted in payment of instalments.
- h. That as per the terms and conditions of the buyer's agreement, the complainant was under a contractual obligation to make timely payment of all amounts payable under the buyer's agreement, on or before the due dates of payment failing which the respondent was/is entitled to levy delayed payment charges in accordance with clause 2(b) read with clauses 14 and 15 of the buyer's agreement.
- i. That the respondent was required to make slight revisions in the building plans for reasons beyond its control and for the betterment of the project as well as the allottees. On account of the same, the respondent had issued letters seeking objections, if any

from the allottees including the complainant. The respondent had dispatched letter dated 14.09.2020 to the complainant inviting objections for approval of revised building plans of the said project.

- j. That it would not be out of place to mention that the respondent had completed construction of the project and had applied for the occupation certificate in respect thereon on 08.12.2021. The occupation Certificate was issued by the competent Authority on 31.03.2022.
- k. That once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project
- l. That upon receipt of the occupation certificate, the respondent offered possession of the unit in question to the complainant vide letter dated 11.10.2023. The complainant was informed about the decrease in super area of the unit from 267 sq. ft. to 262.12 sq. ft. and was also called upon to remit balance amount as per the attached statement and also to complete the necessary formalities

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and documentation so as to enable the respondent to hand over possession of the unit to the complainant.

- m. That moreover, the complainant had also been informed about the renaming of the unit in question from CHC R-FF-031 to CHC R-02-031. It is pertinent to mention that the revised building plans had been approved by the concerned statutory authorities leading to change in nomenclature. According to the approved building plans, there were some revisions/ modifications leading to the change in nomenclature of the floors from Lower Ground Floor (LGF), Upper Ground Floor (UGF), First Floor (FF) and Second Floor (SF) to Ground Floor (GF), First Floor (01), Second Floor (02) and Third Floor (03), respectively. In view thereof, the unit of the complainant had not actually been shifted/changed but only the nomenclature had been altered.
- n. That the compensation amounting to Rs.28,133/- was also credited to the complainant, although in accordance with clause 19(c) of the buyer's agreement, the complainant, being in default of the buyer's agreement is not entitled to any compensation from the respondent. Moreover, an amount of Rs.31,916/- and Rs.1,09,101/- was credited to the account of the complainant towards anti-profiteering and credit compensation against the last demand payable on offer of possession respectively.
- o. That however, the complainant had failed to make payment of the balance amount of Rs.20,10,797/- (including delayed payment charges) as on the date of issuance of final notice dated 16.01.2024 and take possession of the unit despite having been issued letter of offer of possession dated 11.10.2023. Moreover, the complainant had also been reminded on several occasions to make payment of

the outstanding amount by the respondent despite the respondent being under no obligation to do so.

- p. That thereafter, the respondent was constrained to issue pre-cancellation letter dated 16.01.2024 to the complainant on account of the failure of the complainant to make payment of the balance sale consideration amount.
- q. That eventually, the respondent was constrained to issue cancellation letter dated 27.03.2024 to the complainant vide which the allotment of the complainant in respect of the unit in question had been cancelled. It had been duly mentioned in the aforesaid cancellation letter that the total sale consideration amount of the unit in question was Rs.19,48,111/-. However, till date, the complainant had made a payment of merely Rs.5,76,588/- and the same had also been mentioned in the aforesaid letter. The complainant had also been called upon to collect the recoverable amount within a period of seven days from the date of issuance of the aforesaid letter.
- r. That the respondent has duly fulfilled its contractual obligations under the buyer's agreement by offering possession of the unit into the complainant within the time period stipulated under the buyer's agreement. There is no default or lapse on the part of the respondent and therefore the institution of the present false and frivolous complaint is absolutely unjustified and unwarranted.
- s. That clause 16 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the unit within a

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period of 42 months plus four months grace period, from August 2016 or the date of start of construction, whichever is earlier. In the case of delay by the allottee in making payment or delay on account of reasons beyond the control of the respondent, the time for delivery of possession stands extended automatically. In the present case, the complainant is at default who has failed to make timely payment of sale consideration as per the payment plan and are thus in breach of the buyer's agreement. The time period for delivery of possession automatically stands extended in the case of the complainant in accordance with clause 17 (vi) of the buyer's agreement, till payment of all outstanding amounts to the satisfaction of the respondent.

- t. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. That as has been submitted in the preceding paras of the present reply, the respondent had completed construction of the unit/tower by December, 2021 and had applied for issuance of the occupation certificate on 08.12.2021. The occupation certificate was issued by the competent authority on 31.03.2022. It is respectfully submitted

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that after submission of the application for issuance of the occupation certificate, the respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation certificate as well as time taken by Government/Statutory Authorities in according approvals, permissions etc. necessarily have to be excluded while computing the time period for delivery of possession.

- u. That several allottees including the complainant have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant is totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

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- v. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied upon by the complainant for seeking interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The complainant cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. Assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.
- w. That no illegality or lapse can be attributed to the respondent. Thus, the allegations levelled by the complainant qua the respondent are totally baseless and do not merit any consideration by the Hon'ble Authority. The present application is nothing but an abuse of the process of law. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.
- x. That the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond

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or contrary to the agreed terms and conditions between the parties.

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

E. Jurisdiction of the authority:

7. The objection raised by the respondent regarding rejection of complaint on ground of subject matter 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.

E.I Territorial jurisdiction

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

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

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34: Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Finding on objections raised by the respondent:**F.1 Objection regarding the complainant being investor.**

9. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he 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 buyer's agreement, it is revealed that the complainant is buyer and he has paid a total price of Rs.6,36,637/- to the promoter towards purchase of a 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;"

10. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. The

concept of investor is not defined or referred to 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". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

11. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or

quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

12. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

F.III Objection regarding force majeure conditions:

14. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various construction bans, default of contractors, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization of currency. But all the pleas advanced in this regard are devoid of merit. As the events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact the project being developed by the respondent and are to be considered while fixing the timelines for completion of the project. Though some

allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainant:

- G.I** Direct the respondent to withdraw cancellation letter dated 27.03.2024.
- G.II** Direct the respondent may kindly be to restore the allotment of unit apartment bearing no. CHC R-FF-031 having a super area of 267 sq. ft. in the project which was illegally and unilaterally changed to (CHC R-02-031) by the respondent vide its offer letter of possession.
- G.III** Direct the respondent not to sell the said unit to any third party before the decision of the present complaint or create any kind of third party rights.
- G.IV** Direct the respondent to accept the outstanding payment till date of the said unit in question which the complainant is ready to pay as per Act of 2016.

15. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

16. In the instant complaint, the unit of the complainant was cancelled by the respondent vide cancellation notice dated 27.03.2024 on account of non-payment of outstanding dues. The counsel for the respondent vide proceedings of the day dated 11.09.2025 clarified/stated that the respondent is willing to reinstate the unit and handover the possession after payment of outstanding amount along with interest on delayed payments. The counsel for the complainant also confirmed during the proceedings dated 11.09.2025 that the complainant is also willing to take the physical possession of the allotted unit and to pay the outstanding amount after adjustment of delayed possession charges.

17. In view of the above-stated facts, the cancellation notice dated 27.03.2024 is set-aside and the respondent is directed reinstate the

allotted unit of the complainant within a period of 30 days from the date of this order.

18. The respondent is further directed to issue a revised SOA after the adjustment of delayed possession charges. The complainant is directed to the outstanding amount, if any, after the adjustment of delayed possession charges in next 30 days from the date of issuance of revised SOA. The interest on outstanding amount towards the complainant/allottee shall be levied by the respondent-promoter at an equitable rate of interest as per section 2(zb) of the Act of 2016.

G.V Direct the respondent to execute the agreement to sell/ builder buyer's agreement with the complainant for the mentioned unit.

19. It is an admitted fact by both the parties and a copy of buyer's agreement is annexed with the complaint at Annexure C3 which depicts that the buyer's agreement was duly executed on 30.08.2016 itself. Thus no direction to this effect.

G.VI Direct the respondent to handover the peaceful possession of the unit bearing (CHC R-FF-031) having a super area of 267 sq. ft.

G.VII Direct the respondent to pay delayed possession charges @15% per annum (compoundable) from the date of each payment made by the complainant may kindly be awarded in favour of the complainant and against the respondent till the physical hand over of the possession of the unit.

20. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

21. 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."

22. Clause 16(a) of buyer's agreement dated 30.08.2016 provides for handing over of possession and is reproduced below:

a) Time of Handing over the possession:

(i) *The Company shall endeavor to offer possession of the unit to the allottee within 42 months from August, 2016 from the date of start of construction, whichever is earlier, subject, however, to force majeure conditions as stated in clause 34 of this agreement and further subject to the allottee having strictly complied with all the terms and conditions of this agreement and not being in default under any provisions of this agreement and all amounts due and payable by the allottee under this agreement having been paid in time to the company. The company shall give notice to the allottee, offering in writing, to the allottee to take possession of the unit for his occupation and use ("Notice/Intimation of Possession")*

23. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within 42 months from August, 2016 with grace period of 4 months. Thus, the due date of possession comes to June, 2020. But as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, a grace period of six months has been allowed by the Authority. Therefore, the due date of possession comes to August, 2020.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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.

25. 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.
26. 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., 11.09.2025 is @ 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
27. 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.
28. 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 to them in case of delayed possession charges.
29. In the relief sought, the complainant is seeking possession of the unit bearing no. CHC R-FF-031 admeasuring 267 sq. ft. which was initially allotted to the complainant. But the respondent in its reply dated 05.12.2024 has clarified that there were some revisions/ modifications leading to the change in nomenclature of the floors from Lower Ground Floor (LGF), Upper Ground Floor (UGF), First Floor (FF) and Second Floor (SF) to Ground Floor (GF), First Floor (01), Second Floor (02) and Third Floor (03), respectively. In view thereof, the unit of the complainant had not actually been shifted/ changed but only the nomenclature had been altered. The change in area of the unit has been

made as per clause 6(d) of the buyer's agreement. The relevant clause is reproduced below for ready reference:

6. Alterations/ Modifications in the layout Plans and Designs

(d) In case of any alteration/modification resulting in 10% increase or decrease in the super area of the unit at any time prior to and upon the grant of occupation certificate, the company shall intimate the allottee in writing of such increase or decrease in super area thereof and the resultant change, if any, in the total lease premium at the original rate for the unit. Further, the company shall raise additional demand in case of an increase in the super area of the unit, and the allottee shall be liable to pay the same within thirty (30) days of raising such demand by the company, failing which, the allottee shall, without prejudice to any other right of the company, be liable to pay delayed payment charges as per the terms set out in clause 15(a)(i) and clause 15(a)(ii). For any decrease in the super area, the said reduced amount shall stand adjusted in the final instalment payable by the allottee, as set forth in the payment plan."

30. The Authority has gone through the clause of the buyer's agreement which talks about alteration/modification in the layout plans and designs and both parties agreed to 10% increase or decrease in the super area of the unit at any time prior to and upon grant of occupation certificate. The unit of the complainant has been reduced to 262.12 sq. ft. from 267 sq. ft. i.e., the unit was decreased by 2.66% which means the alteration has been made as per the agreed terms of the buyer's agreement. Thus, the relief sought by the complainant regarding unit bearing no. CHC R-FF-031 admeasuring 267 sq. ft. is hereby dismissed and the respondent is directed to handover the unit offered vide offer of possession letter dated 11.10.2023.

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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. The due date of handing over of possession is August, 2020 but the offer of possession was made on 11.10.2023. Accordingly, the non-compliance of the mandate contained

in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of handing over the possession i.e., August, 2020 till offer of possession (11.10.2023) after obtaining occupation certificate plus two months i.e., 11.12.2023 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.

G.VIII Direct the respondent to execute the conveyance deed for the said unit in favour of the complainant after obtaining the OC from the government department.

32. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

33. As the respondent has already made an offer of possession on 11.10.2023, thus the respondent is directed to get the conveyance deed executed within 90 days from handing over of possession.

G.IX Direct the respondent not to charge the maintenance and interest on the delayed payment from the complainant till the actual handover of the possession of the unit.

34. The respondent is entitled to charge maintenance charges as per terms and conditions of the buyer's agreement. In the present matter, the respondent had obtained the occupation certificate from the competent authority on 31.03.2022. As per final notice letter dated 16.01.2024 issued by the respondent an amount of Rs.3,12,897/- as delayed payment charges, Rs.33,405/- as monthly maintenance charges and Rs.1,185/- towards delayed payment charges on monthly maintenance charges has been demanded. The Authority has gone through the buyer's agreement and as per clause 15 of the buyer's agreement the respondent is charging the interest @ 12% per annum for any delay in

making payment. The agreement in the pre-RERA agreement and clauses of such buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the interest for delayed payments as held by Hon'ble Apex court in plethora of judgements. The promoter cannot be allowed to take undue advantage of his dominate position. Further, it is pertinent to mention here that interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

35. Therefore, interest on the delay payments/maintenance dues 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 to the complainant in case of delayed possession charges. Thus, the respondent can charge interest on the outstanding maintenance charges at the prescribed rate i.e., 10.85% from the complainant as prescribed under 2(za) of the Act of 2016. The respondent is further, directed not to charges any amount against holding charges from the complainant/allottee at any point of time even after being part of the

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buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

G.X Direct the respondent to provide the cost of present litigation amounting to Rs.1,00,000/-.

36. The complainant is seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** 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 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.

H. Directions of the Authority:

37. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. August, 2020 till 11.10.2023 i.e., expiry of 2 months from the date of offer of possession (11.12.2023). The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
 - ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order.
- The complainant is directed to pay outstanding dues, if any, after

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adjustment of delayed possession charges and take the possession within next days and the respondent shall get the conveyance deed executed in terms of Section 17 of the Act of 2016.

- iii. 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.
- iv. 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 complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by **Hon'ble Supreme Court** in **Civil Appeal Nos. 3864-3889/2020** decided on **14.12.2020**.

38. The complaint stand disposed of.

39. Files be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2025