

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

Date of Order: 07.08.2025

NAME OF THE BUILDER		PARKWOOD INFRASTRUCTURE PRIVATE LIMITED	
PROJECT NAME		"PARKWOOD WESTEND"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5396/2024	Subhash Saluja Through Legal Heirs Kanta Rani Usha Saluja Ridhi Talwar Manan Saluja V/S Parkwood Infrastructure Private Limited	Shri Rahul Bhardwaj Advocate (for complainants) and Shri Venket Rao Advocate and Shri Gunjan Kumar Advocate (for Respondent)
2.	CR/5413/2024	Subhash Saluja Through Legal Heirs Kanta Rani Usha Saluja Ridhi Talwar Manan Saluja V/S Parkwood Infrastructure Private Limited	Shri Rahul Bhardwaj Advocate (for complainants) and Shri Venket Rao Advocate and Shri Gunjan Kumar Advocate (for Respondent)

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Parkwood Westend" (Group Housing Colony) being developed by the same respondent/promoter i.e., M/s Parkwood Infrastructure Private Limited. The terms and conditions of the buyer's agreements, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delay possession charges along with interest and other.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location	Parkwood Infrastructure Private Limited at "Parkwood Westend" situated in Sector- 92, Gurugram.				
Project Area	14.125 Acres				
DTCP License No.	53 of 2010 dated 10.07.2010 valid up to 09.07.2018				
RERA Registered	Registered Vide registration no. 16 of 2018 dated 19.01.2018 Valid up to 31.12.2019				
Possession Clause: - 28. Possession 28 (a) Time of handing over the possession "That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six(36) months from the date of signing of this Agreement. If, however, understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready and complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed."					
[Emphasis supplied]					
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Status of Possession	Total sale consideration and amount paid
1.	CR/5396/2024 Subhash Saluja Through Legal Heirs Kanta Rani Usha	F-502, 5 th floor, Tower-F 1200 sq. ft. (super area)	01.02.2012 (page 43 of complaint)	Due date of possession: 01.02.2015 (Note: as per clause 28(a))	TSC: - Rs.31,20,000/- (As per payment plan at page no. 72 of the complaint)

	Saluja Ridhi Talwar Manan Saluja V/S Parkwood Infrastructure Private Limited DOF 14.11.2024 Reply 15.05.2025	(page 49 of complaint) 1345 sq. ft. (super area) (As per letter dated 27.09.2017 at page 92 of complaint)	Date of Endorsement 30.04.2013 (page 28 of complaint also confirmed during proceedings dated 07.08.2025)	the due date is calculated 36 months from date of execution of buyer's agreement) OC: Not obtained OFFP: Not issued	AP: - Rs.30,16,874/- (As per applicant ledger dated 12.05.2025 at page no. 20-24 of the reply)
2.	CR/5413/2024 Subhash Saluja Through Legal Heirs Kanta Rani Usha Saluja Ridhi Talwar Manan Saluja V/S Parkwood Infrastructure Private Limited DOF 14.11.2024 Reply 15.05.2025	D-703, 7 th floor, Tower- D 1685 sq. ft. (super area) (page 51 of complaint) 1805 sq. ft. (super area) (As per letter dated 27.09.2017 at page 99 of complaint)	08.06.2012 (page 45 of complaint) Date of Endorsement 30.04.2013 (page 80 of complaint)	Due date of possession: 08.06.2015 (Note: as per clause 28(a) the due date is calculated 36 months from date of execution of buyer's agreement) OC: Not obtained OFFP: Not issued	TSC: - Rs.43,71,125/- (As per payment plan at page no. 74 of the complaint) AP: - Rs.38,29,479/- (As per applicant ledger dated 12.05.2025 at page no. 20-25 of the reply)

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

1. Direct the respondent to handover the possession of the flat originally allotted to the complainants i.e., D-703, having super area of 1,685 sq. ft.;
2. Direct the respondent to pay the delayed possession compensation to the complainants for each day of delay from the date of possession;
3. Direct the respondent to pay a sum of Rs.1,50,000/- to the complainants towards litigation costs;
4. Grant any other relief that may be necessary in the interest of justice, equity and good conscience.

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

Abbreviation	Full form
DOF	Date of filing complaint
TSC	Total Sale consideration
AP	Amount paid by the allottee(s)
OC	Occupation certificate
OFFP	Offer of possession

4. The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not

handing over the possession by the due date, seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5413/2024 titled as Subhash Saluja Through Legal Heirs Kanta Rani Usha Saluja Ridhi Talwar Manan Saluja V/S Parkwood Infrastructure Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

7. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/5413/2024 titled as Subhash Saluja Through Legal Heirs Kanta Rani Usha Saluja Ridhi Talwar Manan Saluja V/S Parkwood Infrastructure Private Limited

Sr. No.	Particulars	Details
1.	Name of the project	"Parkwood Westend", Sector-92, Gurugram, Haryana.
2.	Nature of project	Group Housing Colony
3.	Project area	14.125 Acres
4.	DTCP License no.	License No. 53 of 2010 dated 10.07.2010 Valid upto 09.07.2018

Handwritten signature/initials

5.	RERA registered	Registered 16 of 2018 dated 19.01.2018, Valid upto 31.12.2019
7.	Unit no.	D-703, Tower-D, 7 th Floor (As mentioned in BBA at page 51 of complaint)
8.	Unit area	1685 sq. ft. (super area) (As mentioned in BBA at page 51 of complaint)
9.	Revision in super area [increased by 7.12%]	1805 sq. ft. (super area) (As mentioned in letter dated 27.09.2017 at page 99 of complaint)
10.	Allotment letter [Original Allottee]	25.10.2010 (As on page 36-42 of complaint)
11.	Date of execution of buyer's agreement [Original Allottee]	08.06.2012 (As on page 45 of complaint)
12.	Possession clause	Clause 28. Possession (a) Time of handing over the Possession <i>That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six(36) months from the date of signing of this Agreement. If, however, understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready</i>

		and complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed. [Emphasis supplied] (As on page 61 of complaint)
13.	Due date of possession	08.06.2015 (Calculated 36 months from date of execution of agreement)
14.	Letter from original allottee to substitute and endorse the allotted unit in favor of Subhash Saluja (i.e., allottee who has deceased on 11.02.2021.)	30.04.2013 (page 26 of complaint)
15.	Endorsement in favor of Subhash Saluja (i.e., allottee who has deceased on 11.02.2021.)	30.04.2013 (page 80 of complaint)
16.	Death certificate of Subhash Saluja	11.02.2021 (page 31 of complaint)
17.	Legal heir's certificate	12.04.2022 (page 27-35 of complaint)
18.	Total sales consideration	Rs.43,71,125/- (As per payment plan on page 74 of complaint)
19.	Amount paid by the complainants	Rs.38,29,479/- (as per applicant ledger dated 12.05.2025 at page 20-25 of reply)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:

- I. That the complainants are law abiding citizens of the country who have been cheated by the malpractices adopted by the respondent(s) as stated to be a builder and is allegedly carrying out real estate development since many years. That the complainants are "Allottees"



within the ambit of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016.

- II. That the respondent through its Chairman, Directors and authorized representative, is a "promoter" as per Section 2 (zk) of the Act, who approached the complainants through its authorized representatives to dupe them out of their hard-earned money in the name of development by making several false promises.
- III. The complainants herein are the legal heirs of Late Mr. Subhash Saluja, who was the subsequent allottee in the project. Based on false advertisements by the respondent, Mr. Saluja purchased the subject unit in the project from one Mr. Lucky Sharma ("Original Allottee") with hopes of owning his own home in 2013. The complainants, as legal heirs of Mr. Saluja, contends that they are now subjected to fraud, malpractice, and unfair trade practices adopted by the respondent, which has allegedly been carrying out real estate development for many years. Notably, despite being a subsequent allottee, Mr. Saluja qualified as an "Allotte"" within the ambit of Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.
- IV. That, unfortunately, Mr. Subhash Saluja passed away on 11.02.2021 and is survived by his four legal heirs, as follows: Kanta Rani (Mother), Usha Saluja (Wife), Ridhi Talwar (Daughter) & Manan Saluja (Son). That none of the legal heirs have any dispute regarding the ownership of the unit, and they are collectively filing this complaint seeking the reliefs prayed for herein.
- V. The respondent, is a company incorporated under the provisions of the Companies Act, 1956, with its registered address at 1101, 11th Floor, Hemkunt Chambers, 89, Nehru Place, New Delhi, and is engaged, among other things, in the construction, development, marketing, and

sale of various real estate projects. The respondent, a "Promoter" as per Section 2(zk) of the Act, approached the complainants through its authorized representatives to deceive them out of their hard-earned money under the guise of development by making several false promises.

- VI. In 2012, the original allottee approached the respondent with the intention of purchasing a unit in the project Parkwood Westend, situated at Sector 92, Gurugram. Based on the original allottee's request, he submitted an application dated 25.10.2010, seeking the allotment of a unit in the said project. Following the application, the Respondent allotted Unit No. D-703 in Block D, having a super built-up area of 1,685 sq. ft., via an allotment letter dated 25.10.2010. pursuant to the allotment, the original allottee entered into a flat buyer agreement dated 08.06.2012.
- VII. That, lured and induced by the attractive advertisements, assurances, representations, and promises made by the respondent, Late Mr. Subhash Saluja purchased the subject unit from the original allottee via change of rights on 12.04.2013. At the time of purchasing the unit, Mr. Saluja was assured by the respondent that possession of the unit would be handed over by 01.06.2015 as per clause 28 of the agreement. However, the respondent failed to fulfill this promise during Mr. Saluja's lifetime due to its shortcomings. As a result of these failures and false claims, the complainants are before this Authority to raise their grievances, as they have invested their hard-earned money in the project, which the respondent represented as a one-of-a-kind development with impeccable facilities.
- VIII. Subsequent to purchasing the subject unit, Late Mr. Saluja paid a sum of Rs.38,29,479/- against the total sale consideration of Rs.43,71,125/-.



That the respondent has miserably failed to comply with the terms and conditions of the flat buyer agreement, even after receiving more than 100% of the total consideration i.e., Rs.49,26,276/-. The complainants have diligently paid their dues whenever demands for payment were raised by the respondent, and they never showed any intention of not paying the remaining amount.

- IX. The respondent mischievously and unilaterally, without prior intimation to the allottees, revised the layout of the project and later informed the complainants of this change via letter dated 27.09.2017. The letter also informed the complainants that the respondent had revised the saleable area of their unit.
- X. That the complainants have consistently followed up with the respondent through various correspondences, including emails, letters, and telephone calls to its authorized representatives, expressing their grievances regarding the delay in possession of their unit. However, the respondent has paid no heed to their concerns. Notably, in an effort to defraud the complainants and deprive them of their hard-earned money, the respondent never corresponded with them via email.
- XI. That the complainants is inter alia that the respondent, despite receiving substantial consideration from the complainant for the unit, the respondent has miserably failed to hand the over the possession of the unit till date.
- XII. That inspite of numerous attempts made by the complainants to contact the respondent(s), the complainants have not received any satisfactory response supported with proof of concrete steps taken and progress made by the respondent(s) for handing over the possession of the promised apartment/ flat along with all the promised appurtenant infrastructure and services duly developed and put in

place by them, and this is clearly a prima facie case of unfair trade practices as per Section 7(1)(c) and 7(1)(d) of the RERA Act which have been adopted by the respondent(s), and same are against the provisions of Section 11(4) of the RERA Act.

- XIII. Similar to the complainants, the respondent has deceived many other allottees who have invested their hard-earned money in the respondent's project. This leaves no doubt that the respondent's modus operandi is to defraud innocent allottees by taking their money and using it for personal gain. Left with no other option, the complainants are compelled to approach this Hon'ble Authority.
- XIV. The grievance of the complainants is inter alia that despite receiving substantial consideration from the complainants for the said apartment/ flat, the respondent(s) have miserably failed to hand the over the possession of the flat/ apartment to the complainants till date despite the fact that the complainants have paid 90% of the total sale consideration, thus causing not just enormous amount of financial loss and distress on various counts to the complainants, but also huge inconvenience, pain and mental agony to them.
- XV. The complainants seek possession of the unit along with compensation for delayed possession, as per the provisions of the RERA Act, 2016, and the terms and conditions of the builder buyer agreement executed by the developer. Furthermore, the complainants reserve the right to add, supplement, amend, or alter any submission made in the complaint and to produce additional documents or submissions as required or directed by this Authority.
- XVI. As per Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment/ flat/ unit duly completed by the date specified in the agreement, the promoter would be liable to

pay the interest for every delayed month if the allottee wishes to continue with the project. Therefore, the case of the complainants is covered by Section 18 of the RERA Act and the complainants are entitled to seek interest over the delayed possession of the monies paid by him to the respondent(s) along-with applicable interest.

- XVII. That the complainant being aggrieved person filing the present complaint under Section 31 before the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph. That the present complaint has been made with bona fide intention and the same is not pending having similar relief before any other court of law or any other authority or tribunal.
- XVIII. That the Authority has jurisdiction to entertain the present complaint since the project is situated in Gurugram which is well within the jurisdiction of this Authority. That there is no undue delay on part of the complainant in filing the present complaint before this Authority. The balance of convenience is entirely in the favor of the complainant and against the offending respondent.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s):
- Direct the respondent to handover the possession of the flat originally allotted to the complainants i.e., D-703, having super area of 1,685 sq. ft.;
 - Direct the respondent to pay the delayed possession compensation to the complainants for each day of delay from the date of possession;
 - Direct the respondent to pay a sum of Rs.1,50,000/- to the complainants towards litigation costs;
 - Grant any other relief that may be necessary in the interest of justice, equity and good conscience.

12

10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

11. The respondent has contested the complaint on the following grounds:

- I. That the Respondent seeks to raise the following objections/submissions, each of which have been taken in the alternative and are without prejudice to the other. Nothing contained in the preliminary objections/and in reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the Complainants in the complaint.
- II. That the respondent desired to develop and construct a group housing project in Sector- 92, Gurugram, Haryana. Accordingly, the respondent effectuated various sale deeds with the erstwhile land owners and also obtained the requisite sanctions and approvals from the Director, Town and Country Planning, Haryana and other Authorities. Eventually, the respondent commenced the development of the project having nomenclature as "Parkwood Westend" situated at Sector-92, Gurugram, Haryana.
- III. That the respondent adopted the general practice of advertisement and promotion of the project to invite the public for investment in the project.
- IV. That the Mr. Lucky Sharma ("Original Allottee") willingly approached the representatives of the respondent for enquiry about the investment in the project as well as to know the specifications of the projects and thereby the details of the approvals and specifications of

the project were duly disseminated to the original allottee. Thereupon, the original allottee evaluated the site and the facilities provided by the respondent, and thereupon through application form dated 24.10.2010 requested the respondent to allot the unit in their project.

- V. That the respondent had issued an allotment letter dated 25.10.2010 in favour of the original allottee allotting the unit no. D-703suring super built-up area 1685 sq. ft., situated at Sector-92, Gurugram, having a basic sale consideration Rs.33,70,000/-. That the allotment of unit to the original allottee was subject to alteration in the layout plan, which may include change in the area, layout plan, floor, block, number of said flat and increase/decrease in the area of the said unit and such modifications which the promoter or its architect agree shall be final.
- VI. That the flat buyer's agreement dated 08.06.2012 was effectuated between the original allottee and the respondent with regard to the allocated unit, wherein the residential unit bearing Flat No. D-703 located in Tower - D on 7th floor in the Group Housing Complex having an approximate super area of 1685 sq. ft. was confirmed allotted to the complainants for a sale consideration of Rs.43,71,125/- (exclusive of taxes).
- VII. That vide letter dated 27.09.2017, it was duly communicated and apprised to the complainants that after the assessment of the on-site construction stage, there has been revision in the saleable area in April 2017, basis the changes made as per the recommendations of the architects as per the certificate dated 25.04.2017, revised saleable area of the unit of complainant to 1805 sq. ft from 1685 sq. ft.
- VIII. That clause 1.2 d of the agreement dated 08.06.2012 deals with the provision of super area and that it is tentative and is subject to change, as it has explicitly been mentioned that if there is an increase in the

super area, the allottees agrees and undertakes to pay for the increase in the super area immediately on the demand by the respondent, to which the complainants conformed and on the free will and consent, signed the said agreement.

- IX. That upon the request of the original allottee vide letter dated 12.04.2013, the unit in question was endorsed in the name of the instant complainant i.e., Mr. Subhash Saluja.
- X. That the complainant in the instant complaint has submitted at para 11 of the complaint that the complainant has paid Rs.38,29,479/-. That the complainant is in deliberate default to clear the outstanding dues of Rs.6,37,099/-
- XI. That the project of the respondent got delayed due to reasons beyond the control of the respondent. That according to the agreement clause 46, the construction of the said unit was delayed due to 'Force Majeure' conditions wherein the respondent was entitled to extension in the time period of completion.
- XII. That in the agreement, the respondent had inter alia represented that the performance of its obligations under the agreement by the company was contingent upon approval of the unit plans of the said complex by the Director, Town and Country Planning, Haryana from time to time.
- XIII. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native town/state/village, hence creating an acute shortage of labourers in the National Capital Region (NCR). Despite lifting the ban by the Hon'ble Court, the construction activity could not resume at full throttle due to such acute shortage.

- XIV. That in the past few years, construction activities have also been hit by the repeated bans by the Courts/Tribunals/Authorities to curb pollution in the Delhi-NCR region. In the recent past, the Environmental Pollution (Prevention and Control) Authority, NCR EPCA vide its notification bearing no. EPCA-R 2019/1L-49 dated 25.10.2019 banned the construction activity in NCR during night hours (6pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by the EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- XV. That the Hon'ble Supreme Court of India vide its Order dated 04.11.2019 passed in Writ Petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restrictions were partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.
- XVI. That the demonetization and new tax law, i.e. GST, affected the development work of the project. In the view of the facts stated above it is submitted that the Respondent has the intention to complete the project so far which the Respondent is making every possible effort in the interest of the allottees of the project.
- XVII. That even before the normalcy could resume the world was hit by the COVID-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and such period shall be added while computing the delay.
- XVIII. That as per the agreement so signed and acknowledged, the completion of the said unit was subject to the midway hindrances which were beyond the control of the Respondent. And, in case the

construction of the said commercial unit was delayed due to such 'Force Majeure' conditions the Respondent was entitled for extension of time period for completion. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts as has been delineated here in below:

Sr. No.	COURTS, AUTHORITIES ETC. / DATE OF ORDER	TITLE	DURATION OF BAN
1.	National Green Tribunal /07.04.2015	Old diesel vehicle more than 10 years old would not be permitted to ply on the roads of Delhi-NCR, Delhi.	07.04.2015 – 06.05.2015 (30 days)
2.	National Green Tribunal /19.07.2016	O.A. No. 479/2016	(30 days)
3.	National Green Tribunal /08.11.2016	Ban on construction for a period of 1 week	(7 days)
4.	National Green Tribunal /07.11.2017	Vardhman Kaushik Vs. Union of India	(90 days)
5.	National Green Tribunal /09.11.2017 & 17.11.2017	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 9 days (9 days)
6.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)- EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018- 10.11.2018 (10 days)
7.	National Green Tribunal /24.07.2019	O.A. No.667/2019 & 679/2019	(30 days)
8.	Commissioner, Municipal Corporation Gurugram.	Ban on construction activities vide order dated 11.10.2019	11.10.2019 – 31.12.2019 (81 days)
9.	Hon'ble Supreme Court of India – vide order dated 04.11.2019	M. C. Mehta Vs. Union of India W.P. (c) 13029/1985	04.11.2019 – 14.02.2020 (102 days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	3 weeks of nationwide lockdown	3 weeks of nationwide lockdown
11.	Covid-19 Lockdown 2021	12.04.2021 – 24.07.2021	(103 days)
TOTAL		582 days	

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

A

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

14. 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

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

16. 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. Findings on the objection raised by the respondent:

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

17. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/restrictions of the NGT in NCR as well as competent authorities account of the environmental conditions, ban on construction by the order of courts, implementation of GST, demonetization and adverse effects of Covid-19 etc. and others force majeure circumstances but all the pleas advanced in this regard are devoid of merit. Firstly, the events such as orders of NGT in NCR on account of the environmental conditions, ban on construction activity and others force majeure circumstances do not have any impact on the project being developed by the respondent. As the events mentioned above are for short period which does not make such a huge impact on project which can cause and justify inordinate delay of 10 years. Moreover, these events are of routine in nature happening annually and the promoter is required to take the same into consideration while fixing the due date of possession. Secondly, the event of implementation of GST and demonetization are in accordance with government policies and guidelines. Therefore, the respondent cannot categorize the same as force majeure events. And lastly, the Authority has gone through the possession clause of the agreement and observed that the respondent-promoter proposes to handover the possession of the allotted unit within a period 36 months from the date of execution of buyer's agreement i.e., 08.06.2012, So the due date comes out to 08.06.2015, which is much prior to the occurrence of Covid-19 restriction

12

and hence, the respondent cannot be benefitted for its own wrong. The Authority put reliance judgment of *Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020* which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

18. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to handover the possession of the flat originally allotted to the complainants i.e., D-703, having super area of 1,685 sq. ft.;**
- G.II Direct the respondent to pay the delayed possession compensation to the complainants for each day of delay from the date of possession;**
- G.III Grant any other relief that may be necessary in the interest of justice, equity and good conscience.**

19. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

20. In the present complaint, the original allottee (Lucky Sharma) was allotted a unit bearing no. D-703, 7th floor, Tower-D admeasuring 1685 sq. ft. super area in project namely "Parkwood Westend" being developed by M/s Parkwood Infrastructure Private limited vide allotment letter dated 25.10.2010 and thereafter, a buyer's agreement was also executed between the original allottee (Lucky Sharma) and the respondent for the allotted unit on 08.06.2012. Thereafter, the original allottee sold the

subject unit to the subsequent allottee (Subhash Saluja) and on 12.04.2013 requested the respondent to endorse the allotted unit in the name of subsequent allottee (Subhash Saluja) and the same was acknowledged and endorsed by the respondent on 30.04.2013. Therefore, the subsequent allottee (Subhash Saluja) stepped into the shoes of the original allottee on 30.04.2013. Thereafter, on 27.09.2017, the respondent sent a letter to the subsequent allottee vide which the super area was revised from 1685 sq. ft. to 1805 sq. ft.

21. Thereafter, on 11.02.2021, the subsequent allottee (Subhash Saluja) got expired (death certificate at page 31 of complaint) and the present complaint is being filed by the legal heirs of the deceased subsequent allottee (i.e., Subhash Saluja) (legal heir's certificate at page 27-35 of complaint).

22. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

23. Clause 28(a) of the buyer's agreement provides for handing over of possession and is reproduced below:

28. Possession

28 (a) Time of handing over the possession

"That subject to terms of this clause and subject to the FLAT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER,

A

the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six(36) months from the date of signing of this Agreement. If, however, understood between the parties that the possession of various Block/Towers comprised in the complex as also the various common facilities planned therein shall be ready and complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed."

[Emphasis supplied]

24. **Due date of possession:** The due date of possession of the unit as per clause 28(a) of the buyer's agreement is to be calculated as 36 months from the date of execution of buyer's agreement i.e., 08.06.2012. Therefore, the due date of possession comes out to be 08.06.2015.

25. **Admissibility of delay possession charges at 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]

(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.

26. 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.

27. 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

A

date i.e., 07.08.2025 is **8.90%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.90%**.

[Note: during proceedings dated 07.08.2025, the rate of interest was inadvertently recorded as 11.10%, instead of 10.90%]

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

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

Explanation. —For the purpose of this clause—

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

29. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.90%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.

30. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of Rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 28(a) of the buyer's agreement executed between the respondent and original allottee on 08.06.2012 the possession of the subject apartment was to be delivered within 36 months from the date of signing of this agreement. Therefore, the due date of handing over

10

possession is 08.06.2015 to be calculated 36 months from the date of execution of buyer's agreement i.e., 08.06.2012. The respondent has failed to handover possession of the subject apartment within prescribed time as well as till date of this order. 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. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 08.06.2012 executed between the parties. Further, no occupation certificate/ part occupation certificate has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the promoter as well as allottees.

31. The respondent/promoter is under an obligation as per Section 11(4)(f) and Section 17 of the Act, 2016, to get the conveyance deed executed in favour of the complainants. The said obligation can only be fulfilled after obtaining of occupation certificate/ part occupation certificate from the competent authority. Hence, the respondent is directed to execute the conveyance deed in favour of the complainants within three months from the date of receipt of occupation certificate/ part occupation certificate from the competent authority, and upon the payment of stamp duty charges and registration charges by the complainants/allottees.
32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is not yet obtained. The respondent has offered the possession of the unit in question to the complainants after receipt of occupation certificate, so it can be said that the complainants shall come to know about the



occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of valid offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 08.06.2015 till the expiry of 2 months from the date of issuance of offer of possession or actual handing over of possession, whichever is earlier.

33. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 08.06.2012 to handover the possession within the stipulated period. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 08.06.2015 till offer of possession after obtaining occupation certificate plus two months or actual taking over of possession, whichever is earlier, at prescribed rate i.e., 10.90% per annum as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.IV Direct the respondent to pay a sum of Rs.1,50,000/- to the complainants towards litigation costs.

34. The complainant is seeking above mentioned relief w.r.t payment of litigation costs. The Hon'ble Supreme Court of India in civil appeal no.6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers*



Pvt. Ltd. Vs. State of UP & Ors. (supra) has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and litigation costs.

H. Directions of the Authority:

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

- i. The respondent/promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.90% per annum for every month of delay from the due date of possession i.e., 08.06.2015 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual taking over of possession, whichever is earlier, as per section 18(1) of the Act read with rule 15 of the rules;
- ii. The arrears of such interest accrued from 08.06.2015 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.;
- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit after obtaining of occupation certificate. Further as per Section 17 of the Act, 2016, the respondent is under obligation to get the conveyance deed executed

12

in favor of the allottee within 3 months from the date of issuance of occupation certificate.

- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% per annum by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottee(s), in case of default i.e., the delayed possession charges as per Section 2(z a) of the Act;

36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, offer of possession, total sale consideration and amount paid by the complainants is mentioned in each of the complaints.

37. Complaints stand disposed off accordingly.

38. True certified copy of this order shall be placed in the case file of each matter.

39. Files be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.08.2025