

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

Complaint no. :	298 of 2025
Date of Filing:	24.01.2025
Date of Decision:	12.09.2025

Parsi W/o Dr. Ravinder Kumar Beniwal
Address at: House no. 331, Sector-15 A, Hisar,
Haryana - 125001

Complainant

Versus

M/s Neo Developers Pvt. Ltd.
Office: Unit no. G 02 & 03, Neo Square, Sector-
109, Palam Vihar, Gurugram - 122017

Respondent**CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Sh. Jaswant Singh Kataria
Sh. Dushyant

Advocate for the complainant
Advocate for the respondent

ORDER

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

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Neo Square, Sector-109, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Commercial colony
4.	RERA Registered or not	Registered Vide no. 109 of 2017 dated 24.08.2017 valid upto 22.02.2024
5.	DTCP License no.	102 of 2008 dated 15.05.2008 valid upto 14.05.2025
6.	Unit no.	143, 3 rd floor (page no. 36 of complaint)
7.	Unit area admeasuring	340 sq. ft. (page no. 36 of complaint)
8.	Date of MOU	17.10.2020 (page no. 20 of complaint)
9.	Buyer's agreement	17.10.2020 (Page no. 33 of complaint)
10.	Assured return Clause	4. The Company shall pay a penalty of Rs.42,075/- per month on the said unit. On the total amount received with effect from 27.08.2021 subject to TDS, Taxes, cess or any other levy which is due and payable by the Allottee(s) and which shall be adjusted in Total Sale Consideration the balance total sale consideration shall be payable by the Allottee(s) to the Company in accordance with the Payment schedule annexed as Annexure I. (page no. 23 of complaint)
11.	Possession clause	3. The Company shall complete the construction of the said building/complex, within which the said space is located within 36 months from the date of execution of

		<i>this Agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate.</i>
12.	Due date of possession	17.10.2023 (calculated from the date of MOU)
13.	Sale consideration	Rs. 29,07,748/- (as per payment plan at page 50 of complaint)
14.	Amount paid by the complainant	Rs.28,31,000/- (as alleged by complainant at page no. 14 of complaint)
15.	Occupation certificate	14.08.2024
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That the complainant on dated 18.08.2020 applied for allotment of commercial shop by making a booking amount of Rs. 3,76,224/-. The allottee has also paid Rs. 24,23,776/- on dated 25.08.2020 and Rs. 31,000/- on the demand of the respondent which is duly received by the respondent as per buyer's agreement. In this way, the complainant has paid Rs. 28,31,000/- to the respondent before entering into the agreement.
 - II. That the allottee was allotted a commercial shop bearing allotment serial no. 143, 3rd floor having a super area of approximately 340 sq. ft. and covered area of about 170 sq. ft. in the project namely "Neo Square" situated at Sector 109, Dwarka Express Way, Gurugram, Haryana. The apartment in question was offered for a basic sale consideration to the tune of Rs. 23,66,740/- excluding some other charges and taxes.
 - III. That the buyer's agreement inter-se the respondent and the allottee qua the commercial shop in question was duly executed on dated



17.10.2020 along with a memorandum of understanding but the respondent intentionally did not mention the date of the possession.

- IV. That as per the memorandum of understanding respondent is liable to pay Rs. 42,075/- per month to the complainant as penalty with effect from 27.08.2021 on the unit in question.
- V. That the respondent kept the complainant in dark and regularly informed the complainant that the respondent will liable to pay Rs. 42,075/- per month to the complainant as penalty with effect from 27.08.2021 on the unit in question as per memorandum of understanding and agreement or adjust in total sale consideration but the respondent neither paid the above amount nor this amount is being adjusted anywhere.
- VI. That the respondent has thus failed to pay above amount nor adjusted the above said amount in spite of its assurances and commitment.
- VII. That the complainant had paid a sum of Rs. 28,31,000/- including some other charges and taxes which has been duly received and acknowledged by the respondent.
- VIII. That the complainant has many times requested the respondent to hand over the possession of the above said unit and to pay Rs. 42,075/- to per month to the complainant as penalty with effect from 27.08.2021 on the unit in question and to get registered conveyance deed in favour of the complainant but the respondent has delayed the possession not is pay Rs. 42,075/- to per month to the complainant intentionally.
- IX. That the complainant herein has been repeatedly and continuously expressing discontent and objecting to the malafide attitude of the respondent towards its allottee. The complainant has been requesting

to the respondent and has made numerous requests and efforts seeking redressal of his grievance.

C. Relief sought by the complainant:

4. The complainant in the present complaint has seeking the following relief(s).
 - (i) Direct the respondent to pay interest for every month of delay at prevailing rate of interest.
 - (ii) Direct the respondent to pay the complainant litigation costs and litigation expenses of Rs. 1,50,000/-.
 - (iii) Direct the respondent to pay sum of Rs. 5,50,000/- for causing mental, physical harassment, frustration & grievance to the complainant and miserable attitude of the respondent and deficiency in service.
5. The present complaint was filed on 24.01.2025. The counsel for the respondent has not filed the reply in the registry of the Authority. Despite multiple opportunities for filing reply on 09.05.2025, 11.07.2025, 08.08.2025. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the Authority by avoiding to file written reply. Therefore, in view of order dated 12.09.2025, the defence of the respondent was struck off. However, on 15.09.2025 the respondent has filed the reply in the registry of the Authority which cannot be considered by the Authority at belated stage as the defence was already struck off on 12.09.2025 and the order was also pronounced on the same day.
6. 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 these undisputed documents and submission made by the parties.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

8. 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.

D.II Subject-matter jurisdiction

9. 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.

10. 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.

E. Findings on the reliefs sought by the complainant:

- (i) Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

11. The complainant intends 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."

12. Clause 3 of the MOU provides the time period of handing over possession and the same is reproduced below:

"3:

"The Company shall complete the construction of the said building/complex, within which the said space is located within 36 months from the date of execution of this Agreement or from the start of construction, whichever is later and apply for grant of completion/Occupancy Certificate.

13. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges in terms of proviso to section 18 of the Act which provides that where an allottee does not intend to withdraw from the project, she 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.

14. 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.
15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
16. 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;"

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
18. On consideration of the documents available on record and submissions made by the parties, 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 MOU executed between the parties. It is a matter of fact that MOU and agreement containing terms and conditions regarding the said unit was executed between the parties on 17.10.2020. As per the clause 03 of the Memorandum of Understanding (MOU) dated 17.10.2020, the possession of the booked unit was to be delivered within a period of 36 months from the date of execution of agreement or from the start of construction whichever is later. In the present case, the date of start of construction are not available so, the due date is calculated from the date of execution of agreement which is 17.10.2020. Therefore, the due date of subject unit comes out to be 17.10.2023. The occupation certificate was received on 14.08.2024 however no offer has been made by the respondent. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

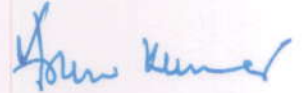
19. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by complainant to the respondent from the due date of possession i.e., 17.10.2023 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
- (ii) Direct the respondent to pay the complainant litigation costs and litigation expenses of Rs. 1,50,000/-.**
- (iii) Direct the respondent to pay sum of Rs. 5,50,000/- for causing mental, physical harassment, frustration & grievance to the complainant and miserable attitude of the respondent and deficiency in service.**
20. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation 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. Therefore, the

complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the authority

21. 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):
- a. 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 the due date of possession i.e., 17.10.2023 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

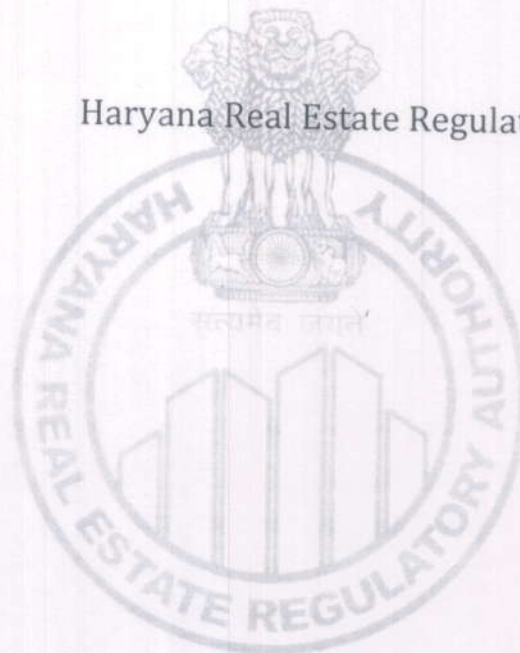
- v. The respondent shall not charge anything from the complainant, which is not the part of the MOU/buyer's agreement.
22. Complaint as well as applications, if any, stands disposed off accordingly.
23. File be consigned to registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025



HARERA
GURUGRAM