

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

Complaint no. : 5048 of 2024
Date of order : 12.11.2025

1. Sharad Gupta
2. Simmi Bassan Gupta
Both R/o: EFP-III-52-0301, Emerald Floors
Premier, Sector-65, Near Worldmark,
Gurugram-122018.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Akhil Aggarwal (Advocate)
Dhruv Rohtagi (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 thereunder or to the allottee 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. No.	Particulars	Details
1.	Name of the project	"Emerald Floors Premier"
2.	Location of project	Sector-65, Gurugram.
3.	Nature of the project	Residential Group Housing
4.	RERA Registered/ not registered	Not registered
5.	DTCP License	License no. 06 of 2008 Dated-17.01.2008
6.	Allotment letter in favour of original allottee (Ms. Asha Sukhwani)	13.09.2011 (As on page no. 58 of reply)
7.	Unit no.	EFP-III-52-0301, Floor-3 rd , Building no. 52 in Emerald Floors Premier III (As on page no. 38 of complaint)
8.	Unit area	1975 sq.ft. [Super Area] (As on page no. 38 of complaint)
9.	Builder-Buyer's Agreement [Between original	29.02.2012 (As on page no. 37 of complaint)



	allottee and respondent]	
10.	Possession clause	CLAUSE 11 POSSESSION (a) Time of handing over the possession <i>Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 24 months from the date of execution of Buyers Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</i> [Emphasis supplied] (As on page no. 52 of complaint)
11.	Due date of delivery of possession	28.02.2014
12.	Nomination letter in favour of second allottee	05.12.2013
13.	Agreement to sell between second allottee and complainants	18.07.2020 (As on page no. 23 of complaint)
14.	Total sale consideration	Rs.1,33,41,217/- (As per S.O.A dated 20.11.2020 on page no. 126 of complaint)
15.	Amount paid by the complainant	Rs.1,43,15,123/- (As per S.O.A dated 31.01.2025 on page no. 258 of reply)

16.	Occupation certificate	11.11.2020 (As on page no. 193 of reply)
17.	Offer of Possession	20.11.2020 (As on page no.196 of reply)
18.	Unit handover letter	14.01.2021 (As on page no. 210 of reply)
19.	Conveyance Deed	18.03.2021 (As on page no. 211 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the present complaint is in reference to the residential group housing project named "Emerald Floors Premier" admeasuring 25.49 acres (approx.) located at Sector-65, Gurugram. The project was proposed to be developed, constructed and sold by the respondent. That the license of the project bearing no.06 of 2008 and was obtained on 17.01.2008 from the Director Town and Country Planning, Haryana, Chandigarh. That the respondent is fully authorized to execute the project and further to sell/transfer/convey/lease and/or assign or agree to sell/transfer/convey/lease and/or assign the project.
- II. That the complainants were previously living in a rented home in Gurugram and have invested their hard earned life savings in the project on the basis of tall assurances, promises and claims of the respondent which has proved to be false, misleading and fraudulent.
- III. That the flat was originally booked by Mr. Asha Sukhwani and Mrs. Nikita Sukhwani and subsequently endorsed in the name of Mr. Ravinder Singh

and Mrs. Harjeet Singh in the year 2013. However, the same was endorsed in the name of the complainants on 26.10.2020 on the strength of Agreement to Sell dated 18.07.2020 entered upon between the complainants and Mr. Ravinder Singh and Mrs. Harjeet Singh. It is, therefore, by the said allotment, the complainants stepped into the shoes of the allottees.

- IV. That the consideration so arrived was on the basis of various clauses in the Agreement to Sell. It is of utmost importance to note here that Mr. Ravinder Singh and Mrs. Harjeet Singh transferred their right of delayed interest compensation to the complainants vide clause 13 of the Agreement to Sell. Even otherwise, the Act also does not differentiate between original and subsequent allottees and it is due to this very reason no separate Apartment Buyers' Agreement is signed with the subsequent allottees but their names are endorsed on the original Apartment Buyer's Agreement and all the clauses of the original Apartment Buyer's Agreement are made applicable on the subsequent allottees as well.
- V. That the complainants invested their lifelong savings into the project in want of living a comfortable life since they have been living in a rented house in Gurugram for long and it became very difficult to plan things ahead in life for the complainants as majority of their earning used to get spent on the rent. That it was only after respondent's tall assurances that the complainants were lured to invest in the project.
- VI. Additionally, when the complainants had already paid huge amount of money to the previous allottees for getting their name endorsed on BBA, the respondent taking advantage of the position of the complainants made them sign multiple documents which were nothing but one-sided,

discriminatory and illegal. Even the copies of the same were never provided to the complainants.

- VII. That based on the tempting and magnificent claims, assurances and proposals of the respondent, the complainants were lured into buying a unit in the project. The respondent made the complainants book the flat by paying the booking amount of Rs.10,00,000/- on 02.08.2011. However a copy of the booking application was never provided to the complainants even after repeated requests.
- VIII. That before signing the Apartment Buyer's Agreement, the respondent illegally and with malafide intension took more than 30% of the BSP i.e. Rs.29,91,944/- from the complainant by 11.11.2011. Having paid such a huge amount, the complainants were left with no choice but to agree to the terms and conditions of the respondent.
- IX. That on 29.02.2012, i.e. after more than 3 months from the date of booking, that the ABA was finally signed and executed between the complainants and the respondent for the total consideration of Rs.1,32,36,715.75/-. It is of utmost importance to bring in the kind attention of Authority that at this stage when the complainant became aware of the totally one sided and biased Agreement, the complainant having already paid 30% of the BSP and was left with no option but to sign on the dotted lines.
- X. That the Agreement signed and executed between the parties was wholly one-sided, arbitrary and discriminatory and the complainants having already paid a huge sum to the respondent had no option but to sign on the dotted lines as provided by the respondent.
- XI. That the complainants were required to make payments to the respondent as per the construction link payment plan which has been annexed along with the agreement. The respondent raised various

demands from the complainant from time to time as different stages of construction.

- XII. That as per clause 11 of the Agreement, the time for complete construction was stipulated to be 24 months from the date of signing of the Agreement with a grace period of three months for taking necessary approvals like Occupation Certificate i.e due date of possession was 28.02.2014. However, the respondent monumentally failed to complete the construction and hand over possession of the flat to the complainant.
- XIII. That it was only after the lapse of more than 6.5 years that the respondent offered possession on 20.11.2020. It is pertinent to note here that the complainants at this time had no option but to take the possession of the Flat with immediate effect due to the following reasons:
- a) *They had already paid a huge amount of money to the previous allottees and for getting their name endorsed with respect to the property,*
 - b) *They had availed a loan with respect to the said property and were already burdened with its EMIs which coupled with the rental for the house the complainants were living in had put them under tremendous financial stress. The respondent being aware about these made the complainants sign various documents/indemnities which were done under force, undue influence and coercion as even the copies of the same were never provided to the complainants.*
- XIV. That the respondent took majority of the sale consideration by April, 2014 by claiming to have completed the casted the top floor slab. However, even after a long gap of more than 6.5 years, the respondent has failed to give possession of the apartment to the complainants. This, prima facie, establishes that the respondent by false representation and fooling the complainants to part away with her hard earned money, took the money from the complainants as per the construction link plan while having failed to achieve the stated/claimed milestones.
- XV. That continuing with the fraudulent practices only that the conveyance deed was executed between the parties on 18.03.2021. Even the

conveyance deed was wholly one-sided, arbitrary and discriminatory and the complainants having already paid a huge sum to the respondent, had no option but to sign on the dotted lines as provided by the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent to give delay interest @18% on Rs.1,32,36,715.75/- for every month of delay from 28.02.2014 till 20.11.2020 when possession was finally offered to the complainants.
- ii. Direct the respondent to pay Rs.2,00,000/- towards legal costs incurred by the complainant.

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

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

- I. That the complainants have no locus standi or cause of action to file the present complaint as the same is based on an erroneous interpretation of the provisions of the Act as well as incorrect understanding of the terms and conditions of the Buyer's Agreement dated 29.02.2012, Conveyance Deed dated 18.03.2021 as well as the transfer documents executed by the complainants and subsequent allottees.
- II. That the complainants are not "allottees" but investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.
- III. That the original allottees booked the unit in question, bearing no. EFP-III-52-0301, in the project known as "Emerald Floors Premier", Sector -

65, Gurugram, Haryana. It is pertinent to state that the original allottees prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the originally allottees were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same.

- IV. That the subject unit was provisionally allotted to the Original Allottees. The original allottees had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. It is submitted that subsequently, the unit in question was endorsed in the name of Mr. Ravinder Singh and Mrs. Harjeet Singh (hereinafter referred to as "Subsequent Allottees") in the year 2013.
- V. That the original allottees and subsequent allottees had defaulted in terms and conditions of the Buyer's Agreement. The original allottees and subsequent allottees have defaulted in timely remittance of the amounts due and payable by them to the respondent which was indispensable requirement under the Buyer's Agreement. In 2020, the complainants purchased the unit in question from the subsequent allottees with full notice and knowledge of the status of the construction on the date of purchase. The complainants executed various transfer documents including affidavit and indemnity whereby the complainants agreed and undertook not to claim any compensation for delay in delivering possession.
- VI. In the meanwhile, the respondent completed construction of the unit/tower and made an application dated 20.07.2020 to the competent authority for issuance of the Occupation Certificate. Upon receipt of the Occupation Certificate dated 11.11.2020, possession of the unit was offered to the complainants on 20.11.2020. The complainants were called

upon to make payments of balance sale consideration, complete the necessary formalities and documentation so as to enable the respondent to hand over possession of the unit to the complainants.

- VII. That the complainants requested the respondent by letter dated 14.12.2020 to hand over possession of the unit although the complainants were conscious and aware that the final finishing works in the unit, which is completed immediately prior to handover, was yet to be completed. The complainants took possession of the unit on 14.01.2021 after admitting and acknowledging that the complainants did not have any claim of any nature qua the respondent.
- VIII. Thereafter, Conveyance Deed dated 18.03.2021 was also registered in favour of the complainants. It is evident from the perusal of the Statement of Account as well as the reminders for payment issued by the respondent from time to time that the original allottees and subsequent allottees have persistently defaulted in making timely payment as per the payment schedule and consequently became liable for payment of interest on delayed payment and were disentitled to any compensation in terms of Clause 13(c) of the Buyer's Agreement dated 29.02.2012. Furthermore, in terms of Clause 13(d) of the Buyer's Agreement, no compensation is payable due to delay or non-receipt of the Occupation Certificate, Completion Certificate and/or any other permission/sanction from the competent authority.
- IX. That the respondent has duly fulfilled its obligations under the Buyer's Agreement and there is no default or lapse in so far as the respondent is concerned. Upon registration of the conveyance deed in favour of the complainants, the transaction between the complainants and the respondent stands concluded and the complainants are not entitled to stake any claim or raise and dispute against the respondent.

- X. The building plans for the apartment/tower in question were approved by the competent authority under the then applicable National Building Code in terms of which buildings have height of 15mtrs or above but having an area of less than 500 square meters on each floor, which being approved by the competent authorities with a single staircase and construction was carried out accordingly.
- XI. That the respondent has duly fulfilled its obligations under the Buyer's Agreement, by completing construction of the unit/tower, obtaining the Occupation Certificate in respect thereof from the competent authority and by offering possession of the same to the complainants as per the Agreement between the parties.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.1 Territorial jurisdiction

9. 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

10. 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)(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;

11. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the objections raised by the respondent.**F. I Whether the complainants can claim delayed possession charges after execution of the conveyance deed.**

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 18.03.2021 and the transaction between the parties stands concluded upon the execution of conveyance deed.
13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainants are barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a

legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. The allottees' have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get the title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer

the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

17. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

F.II. Whether the complaint is barred by limitation or not?

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority

under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 20.11.2020 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 23.10.2024. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.III Objection regarding project being delayed due to force majeure circumstances.

22. The respondent-promoter has raised a contention that the handover of the unit was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to the order of various authorities. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned

facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded. The Authority is of the view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings regarding relief sought by the complainants

G.1 Direct the respondent to give delay interest @18% on Rs.1,32,36,715.75/- for every month of delay from 28.02.2014 till 20.11.2020 when possession was finally offered to the complainants.

23. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

24. Clause 11 of the Builder Buyer's agreement (in short, the agreement) dated 29.02.2012, provides for handing over possession and the same is reproduced below:

Clause 11
POSSESSION

"Time of handing over the possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit **within 24 months from the date of execution of Buyers Agreement.** The Allottee(s) agrees and understands that the Company shall be*

entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.

25. The Builder Buyer's Agreement was executed on 29.02.2012 between the original allottees and the respondent. As per clause 11 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 24 months from the date of execution of the agreement. Therefore, the due date comes out to be 28.02.2014.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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.*
27. 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.
28. 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., 12.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

29. 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;"*
30. 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 Authority has observed that the Buyer's Agreement was executed on 29.02.2012 between the original allottees and the respondent. The possession of the subject unit was to be offered within a period of 24 months from date of the agreement. Thus the due date of possession comes out to be 28.02.2014. The respondent has failed to handover possession of the subject unit on the due date.
31. That the original allottees transferred the subject unit to the subsequent allottees and the respondent issued a Nomination Letter in the favour of the subsequent allottees on 05.12.2013. Thereafter, the unit was transferred to the complainants by the subsequent allottees on 18.07.2020 by way of an Agreement to Sell. The Occupation Certificate in respect of the said project was received by the respondent/promoter on 11.11.2020 and the

thereafter, the unit was offered to the complainants on 20.11.2020. The Conveyance Deed was executed in favour of the complainants on 18.03.2021. No doubts, 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, but the complainants were already in knowledge of the delay caused and they accordingly chose to buy the subject unit. Here the complainants entered into the project with an expectation that delivery of possession is delayed beyond the timeline and the project is running late. Here in the present complaint, the endorsement has been made in favour of the complainants on 18.07.2020 and the occupation certificate was received by the respondent on 20.11.2020. The complainants have only suffered the delay from the time they entered into the project i.e., 18.07.2020.

32. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 18.07.2020 till the date of offer of possession plus two months or handover of possession, whichever is earlier, after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Direct the respondent to pay Rs.2,00,000/- on account of legal expenses.

33. The complainants are seeking the above mentioned relief w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and

the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority: -

34. 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 sec 34(f) of the Act: -
- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 10.85% for every month of delay on the amount paid by the complainants from the date 18.07.2020 till the date of offer of possession plus 2 months or handover of possession whichever is earlier after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.
35. Complaint stands disposed of.
36. File be consigned to the registry.

Dated:12.11.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram