

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

**Complaint no.** : 5355 of 2024  
**Date of complaint** : 07.11.2024  
**Date of order** : 16.10.2025

Shweta W/o Late Shri Surender Bhardwaj  
**Resident at:** House No. 1159/2, Street No.  
09, Jawahar Colony, NIT Faridabad -  
121005, Haryana.

**Complainant**

Versus

M/s Pivotal Infrastructure Pvt. Ltd.  
**Regd. Office at:** 309, 3rd Floor, JMD Pacific  
Square, Sector-15, Part-II, Gurugram,  
Haryana - 122001

**Respondent**

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Rishabh Jain (Advocate)  
Shri Ankit Vohra (AR)

**Complainant  
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 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.No.	Particulars	Details
1.	Name and location of the project	"Ridhi Sidhi" at sector 99, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 Valid up to 08.08.2019
5.	Renewal of DTCP license	Vide Memo no. LC-3074-PA(VA)-2023/6666 dated 06.03.2023 Valid upto 30.06.2023 (page 43 of reply)
6.	RERA Registered/ not registered	<b>Registered</b> vide no. 236 of 2017 dated 19.09.2017 valid upto 08.08.2019
7.	Registration extension vide no.	Harera/GGM/REP/RC/236/2017/EXT/177/2019 dated 30.12.2019 Valid upto 31.08.2020
8.	Unit no.	808, 8th floor, Tower-T1 (As per page no. 40 of the complaint)
9.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 40 of the complaint)
10.	Date of allotment	05.09.2015 (As per page no. 32 of the complaint)
11.	Date of builder buyer agreement (with Surender Bhardwaj)	18.01.2016 (As per page no. 39 of the complaint)
12.	Date of building plan approval	17.10.2014 (As per page no.59-64 of reply)
13.	Environmental clearance dated	22.01.2016 (As per page no.46-55 of reply)
14.	Possession clause	<b>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</b> "Except where any delay is caused on account of

		<p><i>reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavour to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder."</i></p> <p style="text-align: right;"><b>(Emphasis Supplied)</b></p> <p>(As per page no. 67 of the complaint)</p>
15.	Due date of possession	22.01.2020 [Due date of possession calculated from the date of environmental clearance dated 22.01.2016, being later]
16.	Total sale consideration	Rs.19,98,000/- (As per BBA at page no. 42 of the complaint)
17.	Amount paid by the complainant	Rs.22,47,417/- (As per receipts at page no. 32, 87-97 of the complaint)
18.	Application for OC	22.12.2022 (As per page no. 49 of the reply)
19.	Occupation certificate	Not obtained
20.	Offer of fit out possession	24.06.2023 (As per page no.65 of reply)
21.	Offer of possession	Not offered
22.	Death certificate [of original allottee]	07.07.2022 (As per page no.86 of complaint)
23.	Endorsement in favour of complainant [Due to death of original allottee]	03.08.2024 (as mentioned in Endorsement Schedule at page 68 of complaint)



**B. Facts of the complaint:**

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

- I. The complainant, Mrs Shweta wife of Late Shri Surender Bhardwaj, is a peace loving and law-abiding citizen of India, who nurtured hitherto an un-realized dream of having her own apartment in the affordable group housing project in upcoming society with all facilities and standards, situated around serene and peaceful environment. The complainant always leads her life with full of honesty, simplicity and truthfulness and epitomizes utmost kindness and humanism.
- II. That the grievances of the complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the apartment no. T1-808, 8<sup>th</sup> Floor, Tower T1, measuring carpet area 487 square feet along with one two-wheeler parking site earmarked and to be allotted with the apartment in the project "Riddhi Siddhi", situated in revenue estate of village Kherki Majra Dhankot, Sector - 99, Gurugram, Haryana, purchased by the complainant paying her hard earned money.
- III. The respondent is the company duly incorporated under the Companies Act, 1956, as amended upto date and is being sued through its chairman cum managing director. The respondent is carrying out business as builder, promoter and colonizer and is inter alia engaged in development and construction activities.
- IV. In the apartment buyer's agreement, it is stated that the respondent is the owner and possesses the land measuring 6.19375 acres situated in the revenue estate of village Kherki Majra Dhankot, Sector - 99, Gurugram, Haryana. The Director, Town and Country Planning, Haryana vide licence bearing no. 86 of 2014 dated 09.08.2014, had granted



permission for construction and development of an affordable group housing colony, under Affordable Housing Policy 2013, to be known as 'Riddhi Siddhi'.

- V. After the grant of the licence, the respondent collected a huge amount through application for allotment of apartment in the project from gullible and naïve buyers including the original allottee, Late Shri Surender Bhardwaj from 2015 onwards and kept on promising the original allottee to hand over the possession of the apartment on time, as per the agreement and the Haryana Affordable Housing Policy, 2013.
- VI. The respondent obtained the environment clearance on 22.01.2016 from the competent authority. As per clause 8.1 of the agreement, the possession of the said apartment is to be handed over within four years from date of grant of sanction of building plans for the project or the date of receipt of all the environment clearances, whichever is later. Thus, the due date of possession is calculated from the date of environment clearance (22.01.2016), which comes out to be 22.01.2020.
- VII. The original allottee died on 07.08.2022 due to ill health. The said apartment was transferred in the name of his wife and legal heir, Smt. Shweta and was duly endorsed by the respondent on 03.08.2024 as mentioned in the agreement at page 32.
- VIII. The complainant, in total, paid a sum of Rs.22,47,417/- for the apartment till March, 2024, which is more than 100% of the total cost of the apartment as per the payment plan, as and when demanded by the respondent. Still the respondent had failed to timely handover the possession of the apartment to the complainant till date, even after a delay of more than 4 years and 9 months.



- IX. The genesis of the present complaint lies in the gross indifference, refusal and failure of the various obligations on the part of the respondent. The respondent initially enticed various customers including the original allottee, Late Shri Surender Bhardwaj to pay his hard-earned money for the purchase of the apartment in the project.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- i. Direct the respondent to pay a sum of Rs.11,34,448/- towards the delay caused, calculated at the rate of 11.10% (MCLR rate plus 2%) from the due date of possession, i.e., 22.01.2020 till 31.10.2024 (further accruing till actual handover of possession). The amount is calculated as prescribed in the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
  - ii. Direct the respondent to complete the development of the apartment along with all facilities and amenities like water, electricity, roads, parks, etc. immediately.
  - iii. Direct the respondent to handover the legal and rightful possession of the apartment to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.
  - iv. Direct the respondent to execute the conveyance deed of the apartment in favour of the complainant.
  - v. Direct the respondent to not charge anything which is not mentioned in the apartment buyer's agreement.
  - vi. Direct the respondent to pay legal expenses of Rs.1,00,000/- 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:
- a. That the complainant approached the respondent for purchase of the premises, whereby, the complainant and the respondent entered into a



- builder buyer's agreement dated 18.01.2016 with the respondent for purchase of the premises for a total sale consideration of Rs19,98,000/- (exclusive of taxes, GST and other cess(s) payable under any other statute).
- b. That the complaint, as preferred by the complainant, is not maintainable before this Authority in its present form, inasmuch as the complainant has failed to approach this forum with clean hands-an essential precondition for invoking the equitable jurisdiction of this Authority. The complainant has, with deliberate intent, suppressed material and relevant facts which bear directly upon the merits of the matter and which, had they been disclosed, would have materially altered the nature of the relief sought. It is a time-honoured and foundational principle of equity that "he who seeks equity must do equity" and "he who comes into equity must come with clean hands". The act of concealment, whether by commission or omission, not only vitiates the sanctity of the pleadings but also renders the claim liable to be dismissed on the threshold, for lack of bona fides and candour. The suppression of pertinent facts, whether inadvertent or calculated, undermines the credibility of the complainant's case and amounts to a grave abuse of the process of law.
- c. That as per the terms of the BBA, the respondent was liable to deliver the possession of the premises and subsequent execution of the conveyance deed in favour of the complainant, only on the complainant having discharged all the due obligations he is bound to pay as per the terms of the BBA. That the respondent has on several occasions requested and reminded the complainant to fulfil his due obligations as per the terms of the BBA, but to no avail, the complainant has been persistent in his default.



- d. That it will be a travesty of justice, violation of the principle natural justice and contrary to laudable object behind enacting RERA Act, 2016 if the appellant company made to suffer in this way at the hands of a dishonest allottee who has not made the timely payments in the first place. Reliance is placed on Newtech Developers and Promoters Pvt. Ltd. Vs State of UP and Ors. Civil Appeal No. 6745-6749 of 2021 passed by the Hon'ble Supreme Court of Hon'ble Supreme Court.
- e. That the very foundation of the complainant's right to maintain the present complaint is predicated upon the due and faithful discharge of his contractual obligations under the BBA. However, it stands as an admitted position that the complainant has failed to remit the full and final sale consideration, as stipulated under the BBA. In such circumstances, the complainant, having himself committed a material breach of the terms of the contract, cannot be permitted to invoke the jurisdiction of this Authority or seek redressal of alleged grievances arising therefrom. It is a well-settled principle of equity and jurisprudence that one who seeks equity must come with clean hands and must have fulfilled his own obligations before asserting any claim against another. The complainant's continued non-compliance with the essential terms of the BBA renders his cause of action misconceived and unsustainable. Therefore, in the absence of fulfilment of his own contractual liabilities, the Complainant can claim no enforceable right in law, and as such, the present complaint deserves to be rejected in limine for want of locus and maintainability.
- f. That a bare and harmonious reading of the aforementioned Clauses of the BBA leaves no room for doubt that the timely payment of instalments constitutes the very essence and foundation of the BBA. The BBA, in its express terms, underscores the fundamental importance of strict



adherence to the agreed payment schedule, treating such adherence as a condition precedent to the continuance of reciprocal obligations. In this backdrop, the admitted and uncontroverted default on the part of the complainant, in failing to honour the stipulated payment milestones, strikes at the root of the contractual relationship. Having himself disregarded the core covenant of timely performance, the complainant cannot now be permitted to invoke the machinery of this Authority in pursuit of reliefs that presuppose compliance with obligations he has woefully failed to discharge.

- g. That a party in breach cannot be heard to complaint of the consequences of his own default. The invocation of jurisdiction by a defaulting party, who stands disentitled by virtue of his own conduct, is not only legally untenable but also offends the equitable principles that underpin the administration of justice. In such a situation, the present complaint is nothing more than an impermissible attempt to secure advantage despite contractual non-performance, and is liable to be dismissed as wholly devoid of merit and maintainability.
- h. That the conduct of the complainant, marked by inordinate delay, disregard for contractual obligations, and a conspicuous want of diligence, unequivocally points to the inescapable conclusion that any delay, if at all occasioned in handing over possession, stands solely and entirely attributable to the complainant's own lethargy and non-compliance.
- i. The complainant, having failed to discharge his reciprocal obligations under the BBA with reasonable promptitude, cannot now shift the burden of his own default upon the shoulders of the respondent. Such apathetic and indifferent conduct strikes at the very root of good faith



and contractual discipline and renders untenable any grievance premised on alleged delay. It is a settled principle of equity and jurisprudence that one who seeks equity must do equity, and that no party can take advantage of his own default. Therefore, the respondent cannot, in law or equity, be saddled with consequences arising from the complainant's own failure to adhere to the essence of the bargain.

- j. That it is clearly evident from the aforesaid approvals granted by the various authorities, the respondent was entitled to complete and build the project till 22.01.2020. However, due to the outbreak of the pandemic Covid-19 in March, 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view of the difficulties in completing the project by real estate developers, the Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter due to the second covid-19 wave from January to May 2021 once again the construction activities came to a standstill. The pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by the Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid-19 lockdown. Furthermore, the pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent in a financial crunch, which was beyond the control of the respondent.
- k. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, Environment Pollution



(Control and Prevention) Authority, National Capital Region, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period.

- l. That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance whichever is later, was incumbent upon the complainants making timely payments. The complainants, in the present matter, have failed to make timely payments and there were substantial delays in making the payments of the due instalments as is evident from the demand letter.
- m. That the present project is an affordable group housing project being developed in accordance with the provision of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the respondent was paid the allotment price in instalments. Though, the allotment price was fixed by the Government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost has increased the manifolds but the Government of Haryana had failed to increase the allotment price. The Government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of Affordable Housing Policy, 2013.



- n. That the project Riddhi Siddhi, Sector-99, Gurugram is an affordable group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013, wherein the Government of Haryana has set a razor thin margin to make housing available for all. Thus, the grant of interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as applicable to other normal group housing real estate projects is wholly unreasonable and unjust, will impose unnecessary financial burden on the respondent and it shall have a cascading effect in the development and construction works of the project and in obtaining all other relevant approvals.
- o. That since the said project is located at a prime location near the Dwarka Expressway, Gurugram and there is huge premium in the open market on the flats situated in said project which would compensate the allottees of the project in more than adequate manner including any compensation for the delay in delivery of the project. This is further to note here that the respondent is not seeking any enhancement of price or payment other than what has been prescribed under the Affordable Housing Policy, 2013.
7. 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.

**E. Jurisdiction of the authority:**

8. 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**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

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

**Section 11.....**

*(4) 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.*

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



**F. Findings on objections raised by the respondent:****F.I Objection regarding delay due to force majeure circumstances**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, demonetization and implementation of GST and outbreak of Covid-19 pandemic, etc. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the events of demonetization and the implementation of GST are in accordance with government policy and guidelines. Therefore, the respondent cannot categorize them as force majeure events. Thus, the same is devoid of merits and Lastly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that 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. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter-respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.



**G. Findings on the relief sought by the complainant:**

- G.I Direct the respondent to pay delayed interest towards the delay caused, at the prevailing rate i.e., MCLR rate plus 2%, from the due date of possession, i.e., 22.01.2020 till actual handover of possession.**
- G.II Direct the respondent to complete the development of the apartment along with all facilities and amenities like water, electricity, roads, parks, etc. immediately.**
- G.III Direct the respondent to handover the legal and rightful possession of the apartment to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.**
- G.IV Direct the respondent to execute the conveyance deed of the apartment in favour of the complainant.**
- G.V Direct the respondent to not charge anything which is not mentioned in the apartment buyer's agreement.**

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

14. Upon perusal of the documents available on record and submissions made by both the parties, the Authority observes that Sh. Surender Bhardwaj had booked a unit and vide allotment letter dated 05.09.2015, allotted a unit bearing no.808, 8<sup>th</sup> floor, Tower-T1, having 487 sq. ft. (carpet area) in project "Riddhi Siddhi" situated at Sector-99, Gurugram, being developed by the respondent. Further, a buyer's agreement was executed interse parties on 18.01.2016. The allottee had paid an amount of Rs.22,47,417/- out of total sale consideration of Rs.19,98,000/-. Furthermore, the original allottee (i.e., Sh. Surender Bhardwaj) had expired on 07.07.2022. Thereafter on 03.08.2024, the unit was endorsed in favour of Ms. Shweta (i.e., wife of deceased original allottee) complainant herein, due to death case (page 68 of complaint).

15. In the present complaint, 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.*

*(Emphasis supplied)*

16. As per clause 8.1 of the apartment buyer’s agreement dated 18.01.2016 provides for handing over of possession and is reproduced below for ready reference:

***8. Handing over of possession***

***8.1 Expected Time for Handing over Possession***

*“Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authority(ies), the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.”*

*(Emphasis supplied)*

17. The due date of possession of the apartment as per clause 8.1 of the apartment buyer’s agreement is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020.

**18. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 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.

19. 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.
20. 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., 16.10.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
22. The Authorized representative of the respondent during proceedings dated 16.10.2025 stated that the construction is completed and an application for the grant of occupation certificate has already been made to the concerned authority on 22.12.2022 but occupation certificate is yet to be obtained.
23. 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. By virtue of clause 8.1 of the buyer's agreement, the due

date of handing over of possession of the unit in question is 22.01.2020 (calculated from the date of environmental clearance, being later). A document is placed on record by the respondent which shows that an application for grant of occupation certificate was made on 22.12.2022 which is yet to be approved by the competent authority. Therefore, the respondent has failed to handover possession of the subject apartment 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 the possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 18.01.2016 executed between the parties.

24. 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 respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
25. During proceedings dated 16.10.2025, the authorized representative of respondent-promoter submitted that the respondent had already applied for occupation certificate on 22.12.2022 after obtaining pre-requisite approvals from the concerned departments. It is unsatisfied that even after the lapse of more than 5 years from the due date of possession, the respondent has not



obtained OC from the competent authority. Thus, the respondent-promoter is duty bound to obtain OC and hand over possession only after obtaining OC.

**G.VI Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant.**

26. The complainant is seeking above mentioned relief w.r.t legal expenses. The 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. (supra)*, has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of legal expenses.

**H. Directions of the Authority:**

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

- i. The respondent is directed to pay delay interest on the paid-up amount of Rs.22,47,417/- by the complainant at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the competent authority plus two months or actual handing over of possession, whichever is earlier.
- ii. The arrears of such interest accrued from 22.01.2020 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 10<sup>th</sup> 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 complainant 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.

- iv. The respondent shall not charge anything from the complainant which is not the part of the builder 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., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

28. Complaint as well as application, if any, stands disposed of accordingly.

29. File be consigned to registry.



**(Phool Singh Saini)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 16.10.2024**

**HARERA**  
**GURUGRAM**