

BEFORE THE HARYANA REAL ESTATE REGULATORY
 AUTHORITY, GURUGRAM

Complaint no.	6149 of 2022
Date of filing complaint	30.09.2022
Date of decision	11.12.2025

Late Ms. Rita Mishra W/o Late Sh. Hrushikesh Mishra. Representing through Dr. Sonali Mishra and Devashish Mishra (Legal heirs) R/o: W-23/34, Sainik Farms, New Delhi-110062	Complainants
1. M/s BPTP Ltd. Office at: M-11, Middle Circle, Connaught Circus, New Delhi-110001 2. M/s Countrywide Promoters Ltd. 3. Mr. Kabul Chawla 4. Mr. Sudhanshu Tripathi Registered office at: 28, ECE House, 1st Floor, Kasturba Gandhi Marg, New Delhi 110001	Respondents
CORAM:	
Shri Phool Singh Saini	Member
APPEARANCE:	
Sh. Jeemon Raju K with complainants in person	Advocate for the complainants
Sh. Harshit Batra	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	'Park Terra', Sector 37-D, Gurugram, Haryana.
2.	Unit no.	T25-902, Floor No. 9, T-25 (on page no. 40 of complaint)
3.	Unit admeasuring	1691 sq. ft. (on page no. 40 of complaint)
4.	Date of building plan	21.09.2012 (vide project details received from planning branch of the authority)
5.	Date of execution of flat buyer's agreement	24.01.2013 (As per page no. 35 of complaint)
6.	Possession clause	<p><i>"Clause 5.1- The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.</i></p> <p><i>Clause 1.6 "FBA" "Commitment Period" shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely</i></p>

		<i>payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyers Agreement, whichever is later."</i> (Emphasis supplied)
7.	Due date of delivery of possession	24.07.2016 (Calculated the date of the execution of buyer agreement, being later)
8.	Total sale consideration	Rs. 1,34,62,445/- (As per page no. 143 of reply)
9.	Total amount paid by the complainants	Rs. 1,09,39,120/- (As per page no. 143 of reply)
11.	Occupation certificate	09.12.2021 (As per page no. 137 of reply)
12.	Offer of possession	11.12.2021 (As per page no. 141 of reply)
13.	Termination letter	9.11.2022, 11.11.2022 (As per page no. 166 of reply)
14.	Grace period utilization	The grace period is not allowed.

B. Facts of the complaint:

3. The complainants have made following submissions:
 - i. That the complainants have booked a flat/unit at the prestigious project namely, BPTP- 88 -TERRA, customer code: 142832, unit no. T25-902 ad measuring super built-up area of 1,691 Sq. Ft. for a total sum of Rs. 88,77,750/- at Sector-37D, Gurugram, Haryana.

- ii. The complainants have chosen for the construction linked plan for the purchase of aforesaid "Subject Property". On 22.08.2022, the complainants paid booking amount of sum of Rs. 6,00,000/-. The respondents and the complainants had executed a flat buyer's agreement on 24.01.2013.
- iii. That up till date the complainants have been regularly making the payments as per the construction linked plan and 5% of BSP to be paid at the time of registration. It is pertinent to mention here that the calculations made by the respondents qua Invoice dated 11.12.2021 are totally false and the same are opposed by the complainants in the first instance. It is submitted that the respondent has raised basic sale price for the increase in the super built-up area, the preferential location charges is demanded/ raised which was already paid during the course of making payments under the construction linked plan. The complainants have already paid the total amount towards the car parking charges which was not shown in the statement of account. The complainants also raised illegal demands w.r.t. the cost escalation, VAT, GST, club membership charges, IFMS charges and STP charges.
- iv. That the respondents have collected 95% of the sale consideration from the complainants by dishonestly cheating them. The complainants had visited the construction site on 10.01.2022 and to the utter surprise and dismay of the complainants the construction of the "subject property" was incomplete in all respects and was not in a habitable condition.
- v. That due to the malafide intentions of the respondents and non-delivery of the flat unit the complainants have accrued huge losses on account of the career plans of their family member and themselves and the future of the complainants and their family are rendered in dark as

the planning with which the complainants invested her hard-earned monies have resulted in sub-zero results.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondents to handover the possession of the "subject property" in a habitable condition at the earliest thereby registering without undue delay the conveyance deed/sale deed in the name of the complainants within 30 days from the date of passing of the order/judgment.
 - ii. Direct the respondents to execute conveyance deed w.r.t. the subject unit in habitable condition.
 - iii. Direct the respondents to pay compensation to the complainants for the delay in handing over of possession of unit.
 - iv. Direct the respondent to pay compensation cost for filing the present complaint.

D. Reply by respondents:

5. The respondents by way of written reply dated 23.05.2023 made the following submissions:
 - i. The respondents had diligently applied for registration of the project in question i.e., "Terra" located at sector 37D, Gurugram including towers-T-20 to T-25 & EWS before this Hon'ble Authority and accordingly, registration certificate No. 299 of 2017 dated 13.10.2017 was issued by this Hon'ble Authority.
 - ii. It is submitted that the alleged legal heir (Ms. Sonali Mishra) has failed to bring on record any succession certificate to prove that she is the only surviving member of Lt. Smt. Rita Mishra. The complainants have also

failed to bring on record whether Smt. Rita Mishra had died intestate or if there is a will in place. The said fact can only be substantiated by bringing on record a succession certificate. The Indian Succession Act, 1925 defines a succession certificate as a certificate issued by a court to the legal heir of a deceased to establish the authenticity of the heir and give her the authority to inherit debts, securities and other assets of the deceased. Thus, in the absence of the same, the alleged legal heir has no locus standi to file the present complaint.

- iii. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainants is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate'.
- iv. That as per clause-3 of the agreement titled as "sale consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC), preferential location charges (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (i.e. GST), electrification charges (EC), charges for installing sewerage treatment plant (STP), administrative charges, interest free maintenance security (IFMS), etc. shall also be payable by the complainants.
- v. That the construction of the project was going on in full swing. however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. Vide its order NGT placed sudden ban on the entry of diesel trucks of more than ten years old and

directed that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity suddenly came of halt, after the lifting of the ban it took some time for mobilization of resources by various agencies employed with the respondent.

vi. Thereafter the construction of the unit was going on in full swing and the respondents were confident to handover possession of the unit in question as per the terms of the agreement. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past more than 2 years all the activities across the country including the constructions of the projects came to a halt. Initially, the Government of India announced the countrywide lockdown from 24.03.2020 till the further orders. Which was subsequently extended to 31.05.2020. Whereafter, the Government of India partially lifted the said lockdown subject to stringent conditions. This countrywide lockdown led to severe migrant problems whereby all the labour from Delhi, Mumbai and other metropolitans left for their hometown due to which not only the respondent but all the developers across the country witnessed the acute shortage of labour which in turn took considerable time to settle. Whereafter, despite the stringent conditions imposed by the Government of India the respondents endeavoured its best to complete the project, however, to utter dismay of the respondent, our country yet again encountered the second wave of the Covid-19, wherein, the respective State Government(s) including the Government of Delhi and the Government of Haryana considering the surge in the Covid-19 cases imposed the State wise lockdown which again affected the construction of the project in question as well as of the unit of the complainants.

vii. That despite the aforesaid hardships and the force majeure encountered by the respondents including the covid - 19 under whose labyrinth the entire world including the respondents were/ are caught up, the respondents have managed to mobilise the labour to the sites and the construction of the project and the tower where the unit of the complainants is located has been duly completed by the respondents. Whereafter, the respondent obtained the occupation certificate from the concerned government authorities on 30.07.2020. Post which the possession of the unit has been offered to the complainants on 01.08.2020. However, the complainants, being investor do not wish to take possession as the real estate market is down and there are no sales in secondary market, thus has initiated the present frivolous litigation.

viii. All other averments made in the complaint were denied in toto.

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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

7. 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

8. 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 completed territorial jurisdiction to deal with the present complaint.

E. 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)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondents.

F.I Objection regarding force majeure conditions.

9. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project, however, all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 24.01.2013 and as per terms and

conditions of the said agreement the due date of handing over of possession comes out to be 24.07.2016. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondents have even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

10. As far as delay in construction due to outbreak of Covid-19 is concerned, 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.A. 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."

11. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 24.07.2016 and is claiming benefit of lockdown which came into effect on 23.03.2020

whereas the due date of handing over of possession was much 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 and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

G.I Direct the respondents to handover the possession of the "subject property" in a habitable condition at the earliest thereby registering without undue delay the conveyance deed/sale deed in the name of the complainants within 30 days from the date of passing of the order/judgment.

G.II Direct the respondents to pay compensation to the complainants for the delay in handing over of possession of unit.

12. The complainants were allotted unit no T25-902, 9th Floor, Tower-25 in the project of respondent named "Park Terra" vide buyer's agreement dated 24.01.2013 for a total sale consideration of Rs.1,34,62,445/- out of which she paid a sum of Rs.1,09,39,120/- till date. The respondents were obligated to handover the possession of the unit till 24.07.2016, however, failed to do the same. Subsequently, after obtaining occupation certificate on 09.12.2021, possession of the unit was offered to the complainants vide offer of possession letter dated 11.12.2021 along with a demand of outstanding amount of Rs.25,23,325/-. On non-payment of the outstanding amount in due time, reminder letters dated 13.01.2022, 02.02.2022, 15.02.2022 and final demand notice dated 24.03.2022 were sent to the complainants to make payment of the amount due before finally cancelling the allotment of the unit vide cancellation letter dated 09.11.2022 & 11.11.2022 respectively. It is pertinent to mention here that the cancellation was made after filing of the complaint by complainants before the authority.

13. The complainants had booked unit under the construction linked plan and paid an amount of Rs. 1,09,39,120/- against the total consideration of Rs. 1,34,62,445/- consisting of 81.6% of sale consideration. Moreover, the fact cannot be ignored that the builder was under obligation to handover the possession of the unit to the complainants in the year 2016. There has been a delay of more than 5 years, it was the duty of the respondent to adjust the delay possession charges in the said statement of account and after adjustment of delay possession charges such offer of possession should be made. However, the same is not done. The authority is of the view that the cancellation done by respondent is invalid in the eyes of law. The Authority during proceedings dated 31.01.2023 has restrained the respondent-promoter from creating any third-party rights w.r.t. above unit.

14. 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."

15. Clause 5.1 read with clause 1.6 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 5.1- The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.



Clause 1.6 "FBA" "Commitment Period" shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of building plan or execution of Flat Buyers Agreement."

16. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of sanctioning of building plan or execution of buyer's agreement, whichever is later. In the present complaint, the buyer's agreement was executed on 24.01.2013. So, the due date is calculated from the date of

execution of flat buyer's agreement i.e., 24.07.2016, being later. Further it was provided in the flat buyer's agreement that promoter shall be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondent is claiming this grace period of 180 days for making offer of possession of the said unit. There is no material evidence on record that the respondent-promoter had completed the said project within this span of 42 months and had started the process of issuing offer of possession after obtaining the occupation certificate. As a matter of fact, the promoter has not obtained the occupation certificate and offered the possession within the time limit prescribed by the promoter in the flat buyer's agreement till date. As per the settled law, one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage.

18. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.*

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., 11.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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

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

Explanation. —For the purpose of this clause—

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 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;"

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

23. On consideration of the documents available on record and submissions made by both 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 agreement. By virtue of clause 5.1 read with 1.6 of the agreement executed between the parties on 24.01.2013, the possession of the subject apartment was to be delivered within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyers Agreement, whichever is later. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of buyer agreement i.e., 24.01.2013 and the said time period of 42 months has not been extended by any competent authority. Therefore, the due date of possession is calculated from the date of signing of the agreement and the said time period of 42 months expired on 24.07.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 24.07.2016.

24. The respondent has obtained the occupation certificate on 09.12.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 24.01.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period.

25. 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 was granted by the competent authority on 09.12.2021. The respondent offered the possession of the unit in question to the complainants only on 11.12.2021. So, it can be said that the complainants came 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 offer of possession. This 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has 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., 24.07.2016 till the date of offer of possession (11.12.2021) plus two months i.e., 11.02.2022. The complainants is further directed to take possession of the allotted unit after clearing the dues, if any remains after adjustment of delay possession charges and other reliefs within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

26. The present complaint was disposed of vide order dated 10.08.2023, wherein the Authority had set aside the cancellation dated 11.11.2022, and allowed delayed possession charges in favor of the complainants. The respondent, in its reply dated 23.05.2023, raised a contention that the complainants had failed to produce a succession certificate to substantiate that Ms. Sonali Mishra is the sole surviving member of the late Smt. Rita Mishra. However, during the proceedings dated 25.01.2024, the complainants duly placed on record a Legal Heir Certificate, which certifies that Ms. Sonali Mishra and Mr. Devashish Mishra are the surviving legal heirs of the deceased complainants Smt. Rita Mishra.

27. The respondent, in subsequent submissions, raised an objection asserting that the complaint had been filed solely by Ms. Sonali Mishra

and that Mr. Devashish Mishra, being a necessary and proper party, was not impleaded in the present complaint. In response, the complainants filed an amended memo of parties during the proceedings held on 05.12.2024, wherein Mr. Devashish Mishra was duly impleaded as complainants no. 2.

28. Following the impleadment of Mr. Devashish Mishra, the Authority issued notices dated 05.03.2025 and 24.04.2025, directing Mr. Devashish Mishra to appear before the Authority and peruse the matter. However, complainants no. 2, i.e., Mr. Devashish Mishra, failed to appear before the Authority despite the notices. The complainants no.1 (Ms. Sonali Mishra), in her statement before the Authority, asserted that complainants no. 2 is unable to attend the proceedings due to ill health and requested that the complaint be decided in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 ("the Act").
29. In light of the foregoing, the Authority observes that both legal heirs, namely Ms. Sonali Mishra and Mr. Devashish Mishra, are entitled to the relief sought in this matter. As per provisions of law, it is well settled principle that a legal heir, duly recognized through a Legal Heir Certificate, has the right to seek relief in matters relating to property disputes. Therefore, even in the absence of the physical presence of complainants no. 2, the legal rights of both heirs are equally recognized, and no prejudice is caused by the absence of one of the complainants.
30. In view of the above, the Authority holds that both complainants are entitled to the relief sought. Accordingly, directions shall be passed in favor of both complainants, Ms. Sonali Mishra (complainants no. 1) and Mr. Devashish Mishra (complainants no. 2), in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016.

31. 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 @ 10.75% p.a. w.e.f. 24.07.2016 till the date of offer of possession (11.12.2021) plus two months i.e., 11.02.2022; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.III Execute the conveyance deed in favour of the complainants.

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

33. Since the possession of the subject unit has already been offered on 11.12.2021 after obtaining occupation certificate on 09.12.2021. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

G.IV Direct the respondent to pay compensation cost for filing the present complaint.

34. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, 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.

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. Cancellation dated 11.11.2022 is bad in eyes of law and hence set-aside and the respondents are directed to reinstate the unit of the complainants and handover physical possession of the unit within 30 days of this order.
- ii. The respondents are directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e., 24.07.2016 till offer of possession i.e., 11.12.2021 plus 2 months 11.02.2022 to the complainants as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- iii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents.
- v. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



vi. The respondent/promoter is directed to execute the conveyance deed in favor of the complainants/allottee within 3 months as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.

36. Complaint stands disposed of.

37. File be consigned to registry.



(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.12.2025