

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

Complaint no.: 820 of 2024
Date of filing of complaint: 07.03.2024
Date of Order: 16.12.2025

1. Deepak Saluja
2. Sapna Saluja
Both R/o: TPD-H-F07-702, Premier Terraces at
Palm Drive, Sector-66, Gurugram-122011

Complainants

Versus

Landmark Apartments Pvt. Ltd.
Regd. office at: Emaar MGF Business Park,
Mehrauli Gurgaon Road, Sikandarpur Chowk,
Sector-28 Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Kumar Saini

**Chairman
Member**

APPEARANCE:

Shri Garv Malhotra (Advocate)
Shri Amarjeet Kumar (Advocate)

**Complainant
Respondent**

ORDER

1. This 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. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Landmark the residency", Sector 103, Gurugram
2.	Nature of the project	Group Housing Complex
3.	DTCP license no. and validity	33 of 2011 dated 16.04.2011 valid up to 15.04.2026
4.	Name of licensee	Basic Developers Pvt. Ltd. and 2 others
5.	Unit no.	B-111, 11 th floor and Block-B (As per page no. 25 of the complaint)
6.	Unit area admeasuring	1350 sq. ft. (As per page no. 25 of the complaint)
7.	Provisional allotment letter	02.11.2011 (As per page no. 22 of the complaint)
8.	Date of execution of buyer's agreement	27.11.2013 (As per page no. 23 of the complaint)
9.	Possession clause	<p>10.1 Schedule for possession of the said apartment</p> <p>The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment within a period of four years (48 months) from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement.</p> <p>(As per page no. 40 of the complaint)</p>
10.	Due date of possession	27.11.2017 (Note: Due date to be calculated four years from the date of execution of agreement i.e., 27.11.2013) (Grace period not allowed)

11.	Total sale consideration	Rs.97,70,720/- (As per page no. 9 of the complaint)
12.	Amount paid by the complainants	Rs.71,01,264/- (As per details of payment on page no. 19 of the complaint)
13.	Demand letter	03.11.2017 (As per page no. 79 of the complaint)
14.	Intimation for fit-out possession	11.12.2018 (As per page no. 94 of the complaint)
15.	Occupation certificate /Completion certificate	25.09.2020 (As per page no. 95 of the complaint))
16.	Final reminder for payment of outstanding dues	12.11.2020 (As per page no. 97 of the complaint)
17.	Physical handover of unit	11.11.2022 (As per page no. 10 of the application for dismissal of the complaint)
18.	Conveyance deed	09.03.2023 (As per page no. 11 of the application for dismissal of the complaint) Registered on 19.04.2023 at sub-registrar Kadipur (As per page no. 13 of the application for dismissal of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That the complainant had vide application dated 20.12.2010 applied to book a unit in the respondent's project. Along with the application, the complainant paid an amount of Rs.2,00,000 /- in favour of the respondent for the said booking which was acknowledged by the respondent vide receipt dated 17.12.2010. Subsequently, payment of Rs.2,57,000/- was made which was acknowledged by the respondent vide receipt dated 22.01.2011. The provisional allotment for the unit admeasuring 1350 sq. ft was allotted in favour of the complainant on 02.11.2011. It is to be noted here that there was a delay of eleven months in rendering provisional allotment. Vide the allotment letter, the complainant was allotted apartment No. B-111 having an

approximate super area admeasuring 1350 sq. ft. "approximately" located on 11th floor in B block and for allotment of one covered parking space.

- II. That after a delay of two years after the payment done for the initial booking of the unit, the builder buyer's agreement was executed on 27.11.2013 for the total sale consideration of 60,75,500/- (Sixty Lakhs Seventy-Five Thousand Five Hundred Only). It is to be noted that by the time of execution of BBA, the complainant has already paid an amount of Rs.15,59,250/- which constitutes around 25% of the total sale consideration. Section 13 (1) of the RERA Act which lays down that "A promoter shall not accept a sum more than ten per cent of the cost of apartment, plot or building as the case may be as an advance payment or an application fees from a person without first entering into a written agreement for sale with such person and register the said agreement for sale under any law for the tie being in force" and the said provision of the Act has been violated by the respondent by collecting more than 25% of total sale consideration from the complainants.
- III. That firstly, the respondent builder has himself delayed the execution of BBA and had promised at the time of booking that a loan will be approved for the project, but due to the failure to do the necessary formalities the loan could not be approved and the complainant had to face inordinate delay for no fault of theirs. Secondly the time period for delivery as mentioned in the BBA which is five years is highly irrational, illegal, malafide, one-sided and arbitrary and thus the same cannot be taken as a matter of record as RERA guidelines and model BBA state that the time period of construction is supposed to be 3 years + 6 months. Thus, the total time period in which the builder is promising to give the unit is 84 months from the date of initial payment, but he has handed over the possession of the property after a delay of 10 years. As per BBA, the due date of possession comes out to be

27.11.2018, but should be 20.06.2014. That even if for the sake of arguments it is to be calculated from the date of BBA which is one sided a period of 5 years is a very long time period, but should be 3 years plus 6 months grace which comes out to be 27.05.2017. Since the year 2010, the complainant is waiting indefinitely for the complete possession of his unit as basement parking has not been given till date, hence DPC should be given till date.

IV. That as per clause C and D of the BBA which states that developer has obtained license bearing no. 33 of 2011 vide memo No. LC-2412-JE(BR) 2011/5102 dated 19.04.2011 and clause D which states the developer has also obtained approval of zonal plan for the said land from DTCP vide approval Memo No. ZP/721 JD (BS)/2011/7237 dated 31.05.2011 and got the building plan approved from DTCP vide approval Memo No. ZP/721 JD(BS)/2012/7261 dated 27.04.2012.

V. That on 08.11.2013, a letter was written by father-in-law of the complainants in representative capacity pointing out the excessive rate of interest levied by the respondent builder against delayed payment. The complainant brought to the notice of the respondent builder not to issue any further demand for payments till the execution of BBA as the complainants intend to take home loan for all subsequent payments and their request was accepted by Mr. Rajesh Malik and there has been no payment demands from the respondent builder's office. Subsequently, there has been no communication the complainant received from the respondent builder for a while and along with the next payment the complainant was asked to pay delayed payment along with interest @24% and the rate of interest charged was 24% where the letter sent by the respondent developer states the rate of interest in case of delayed payment would be 18%. Upon inspection of the site by Colonel Gahlot, father-in-law and POA holder of the complainants in December, 2016

met the site engineer Mr. Mahipal Singh who informed that internal plastering is complete but up on visit by climbing the stairs to the unit which the complainants unit is situated, it was found that internal plastering was complete only till the seventh floor and no plastering was complete beyond eighth floor. The complainants informed the respondent via e-mail that they have no problem in paying the instalments, but the payment demands should be in accordance with the stage-wise completion of the project.

- VI. That by the year 2017, the complainants had already paid 95% of the total sale consideration, still the respondent developer is not at par with the completion of the project and keeps on raising payment demand and in case of delay in making the payment, the respondent developer charges interest @24% if the payment is done beyond the date mentioned in the demand letter.
- VII. That as on 23.12.2018, upon visit to the site, the status of the project was nowhere near completion. While pointing out the issues pertaining to the project having no direct connectivity to main road and status of the project nowhere near completion, surprisingly as an alternative, Mr. Ravi Dabas offered exchange of the allotted unit for a commercial unit in one of their projects called "The Outlet". Despite the fact that the project completion is not at par with BBA, the respondent kept on raising demand letters.
- VIII. That on 23.04.2019, the respondent filed an application for an occupancy certificate and the OC was received by them on 25.09.2020 for Tower A and EWS block, only after a period of one year and 5 months whereas generally, the OC is received in 6 months. Surprisingly, the respondent then asked the complainants to take over possession based on the OC for Tower A, while their unit was situated in Tower B. Without having a valid occupation certificate for Tower B, the complainants had been asked to do the necessary

formalities and payment for taking possession of the unit arbitrarily, illegally, and malafidely without due process of law.

- IX. That 100% of the instalments have been paid towards the unit and after eleven and half years of making the initial payment towards the unit, the unit was still not completely ready for living, as all the amenities that were promised have not been provided. Moreover, the basement parking has not been allotted and the complainants have been malafidely cheated by the respondent by not yet allotting one covered parking space, as agreed in the BBA.
- X. That, the clubhouse in the society is supposed to be a community building, implying that it is a building that has been paid for by all the allottees and has been included in the cost of their units, for which they have paid in full, and not an exclusive area under ownership of the respondent, as mentioned in para vi on page no. 16 of BBA, and therefore should have been handed over to the Resident Welfare Association. The respondent has demanded a sum of 2,00,000/- for club membership charges, without transferring the clubhouse to the RWA. It is pertinent to note that as of date the club is not even fully built and therefore a delay interest should be awarded from the date of payment of Membership Charges, till the opening of the club and handover to the RWA. It is for the kind information of the Hon'ble authority that this is the common modus operandi of all the builders in Delhi NCR, where they develop and construct the clubs with the money of the residents while showing it as their exclusive land. However, during operations, all expenses for maintaining the club like electricity, water, housekeeping, maintenance, and security upkeep, etc. are borne by the maintenance funds of the society while all the income like rentals and booking etc are retained by the builder. It is reiterated that

the clubhouse forms part of RWA as the same is situated inside the society and thus should be handed over to RWA.

- XI. That the respondent, not even on a single occasion, acknowledged or replied to the complainants' letters and emails, and arbitrarily continued to charge unwarranted and enhanced penal interest on instalments that were not even due, as they were made well before the stage they were agreed as per schedule listed in the BBA. That despite all the illegal and arbitrary acts committed by the respondent, the complainants on every occasion had assured the respondent, that the complainants were ready to pay the actual cost of the unit, as agreed by the terms of the BBA. But despite the assurances the respondent did not waive off the arbitrary and illegal interest.
- XII. That the possession of the unit was taken by the complainants, albeit under duress, on 11.11.2022 and the conveyance deed in favor of the complainants was executed on 09.03.2023 after 13 years of making the initial payment towards the unit and after the execution of BBA on 27.11.2013.
- XIII. That the electricity bills per unit charged from the complainants are much higher than the existing tariff norms and policies for both electricity meter and power backup. The respondent has miserably failed to meet the contractual obligation in provisions of essential service of adequate electricity with 100% power back up, as advertised by the respondent.
- XIV. That at the very early stage of completion itself, the complainants have witnessed parts of cement plaster falling off from the façade as well as water leaking through the walls of their unit, the residents and complainants have approached the respondent builder to carry out a structural audit of the project to ensure the quality of living for himself as well as fellow other residents, however, the request have fallen into deaf ears and the safety of complainants as well as other residents of the project is at risk.

- XV. That the alleged occupancy certificate for the project was received on 25.09.2020. Since, then the operation and maintenance of the project have been carried out by the respondent- builders, and exorbitant maintenance and electricity charges have been levied on the complainants. The complainants have time and again asked the respondent to cooperate in forming an AOA of the society and handover the operation and maintenance of the project to the AOA, sharing all approvals from relevant authorities like MCG, GMDA, HSVP, etc. in respect of water, sanitization, STP, electricity, road, sanctioned plans, layout plans of society, deed of declaration, revision, OC, CC etc.
- XVI. That the complainants have approached the respondent time and again seeking information about the status of the project and date of the offer of possession of the said premises. However, despite an extremely civil approach on his part he was shocked at the arrogant, illegal, arbitrary conduct of the respondent.
- XVII. That the complainants have complied with all the terms and conditions of the various documents executed but the respondent has failed to live up to their part of the contractual obligations and thus are liable for DPC and interest for every month of delay at the prevailing rate of interest, from the due date of possession till valid offer of possession and physical possession. But to date, no amount has been paid back to the complainants and the respondent is enjoying the hard-earned money investment of the complainants for the past many years.
- XVIII. That that the respondent has not registered the project, with the concerned authority within the stipulated time period, prescribed under the Central Act. Therefore, under Section 59 of the Real Estate Act of 2016, for non-

compliance with the said Act and for such violation, a penalty must be imposed on the respondent.

XIX. That the respondent is misusing its position and imposing unfair terms on the complainants and committed an unfair trade practice. In that, the respondent and its employees are attempting to cheat and defraud the complainants, out of their hard-earned money by engaging in dishonest conduct and unfair trade practices.

XX. That the complainants, whose majority of life's hard-earned savings are stuck in this project, have suffered great losses in terms of rental income, and timely opportunity to own and enjoy a property in Gurugram. Hence the respondent is liable to compensate the complainants for their above acts and deeds causing loss of time, opportunity, and resources of the complainants. Due to the malpractices of the respondent, the complainants also suffered great mental and physical agony, harassment, and litigation costs. Thus, due to such hardship faced by the complainants by the act and misconduct of the respondent, the complainants are also reserving his rights to be adequately compensated through the good offices of the learned Adjudicating Officer.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - I. Direct the respondent to pay the delay interest from the date of payment till date of possession and allotment and conveyance deed of the basement parking as the same has not been provided till date.
 - II. Direct the respondent to waive of any delay payment charges/interest (if any).
 - III. Direct the respondent to handover the clubhouse/community centre to RWA and provide delay interest charge from date of payment till opening of club and handover to RWA.

- IV. Direct the respondent to handover the common areas and transfer of all accounts along with all relevant documents to the RWA.
- V. Direct the respondent to raise electricity bills and payments of maintenance as per the existing tariff norms and policies for both electricity meter and power backup.
- VI. Direct the respondent to conduct a structural audit through an independent agency to ascertain the structural integrity of the project.
- VII. Direct the respondent to reimburse litigation cost of Rs.1,50,000/- to the complainants as they are constrained to file the same because of the callous and indifferent attitude of the respondent.
- VIII. The complainants should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondent.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
 - i. That present reply is being filed through the Authorized representative namely Mr. Ravinder Sharma, who has been authorized by the respondent vide board resolution dated 04.09.2024 to institute, sign, file and verify the present reply, sign affidavit/ applications, execute vakalatnama in favour of advocates, depose in the court, compound/ compromise the matter and to do all other acts which are necessary for the just decision of the present complaint.
 - ii. That the complainants vide application form dated 15.12.2010, has applied to the developer/company for allotment of a residential unit in "Landmark The Residency", situated at Sector 103, Gurugram, Haryana being developed by the respondent i.e., Landmark Apartments Pvt. Ltd. In pursuance to the application, the complainants were provisionally allotted a unit bearing no.

B-111 on 11th floor having super area 1350 sq. ft. along with one car parking in B Block of Tower A for a sale consideration of Rs.52,27,500/- in the project vide allotment letter dated 02.11.2011.

- iii. That subsequently, a builder buyer's agreement was executed and was registered on 27.11.2013. As per the terms of the allotment letter and buyer's agreement, the complainants have agreed to the construction linked plan and undertaken to make timely payments of the demands raised in accordance with the construction linked plan. The respondent in accordance with the agreed construction linked plans had duly raised the demands, however, the complainants have failed to make the payment(s) towards the said demand/instalment in/on time and has defaulted in complying with the terms of the agreement/allotment.
- iv. That the complainants had in all probabilities purchased the apartments with a profit motive. However, later on account of recession, the complainants changed their mind to conclude the sale and started making defaults in the payment of the due amount/charges. A demand notice reminder dated 03.11.2017, raising a demand of Rs.1,17,983/- was issued to the complainants. But no payment was forthcoming from the complainants after the reminder dated 03.11.2017, 04.09.2019, 30.09.2020, 12.11.2020, 21.05.2022, 15.06.2022, 05.07.2022 against various pending dues and charges. The respondent vide letter dated 05.07.2022 issued a final reminder cum opportunity letter to the complainants on account of non-payment of dues against the demand/s raised by the respondent by way of several letters and reminders.
- v. That subsequent thereafter vide letter dated 11.12.2018 an intimation regarding the possession of the units of the complainants were issued to the complainants. Through the said intimation, the respondent requested the

complainants to clear its pending dues and contact the office of the respondent for the final formalities of the handover process. However, the complainants did not come forward to make any further payment or contact the office of the respondent for taking possession of the allotted flat.

- vi. That the respondent had applied for the grant of the occupation certificate on 23.04.2019. However, the Director Town and Country Planning Department, Haryana granted the occupation certificate to the respondent vide its letter dated 25.09.2020. Hence, the delay in this case cannot be attributed to the respondent as it took more than 1 year for the concerned dept to grant occupation certificate to the respondent i.e., after processing the application for grant of occupation certificate filed by the respondent on 23.04.2019. The respondent is protected by clauses stipulated in the builder buyer's agreement i.e., the force majeure clause and the clause relating to the extension of time in case conditions beyond the control of the respondent lead to delay in grant of occupation certificate.
- vii. That on 04.09.2019, 30.09.2020, 12.11.2020, 15.03.2021, 21.05.2022, 15.06.2022 & 05.07.2022, the respondent sent various demands & reminders for clearance of outstanding dues and requested the complainants to come forward for taking handover of the possession of the allotted unit. However, the complainants failed to clear the outstanding dues and take possession of its unit.
- viii. That subsequent thereafter a possession letter was handed over regarding the said unit on 11.11.2022 to the allottee wherein the allottee had taken physical possession of the said unit along with designated car parking as agreed in the conveyance deed.
- ix. That subsequently, a conveyance deed was executed and was registered on 19.04.2023 for the unit of the complainants. As per the terms of the

conveyance deed, the complainants have taken physical and peaceful possession of the unit along with designated car parking. The complainants even after taking possession, filed a case apparently with an intention to enrich himself in an unjust manner. The complainants have also been a defaulter in compliance of the terms of the said booking as well.

- x. That the provisions of the Act have only prospective operation, especially when it *inter alia* seeks to impose new burden. It is well settled law that a statute shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. The buyer's agreement in this case was executed prior to the Act came into force. Thus, it is not an agreement for sale as laid down in Annexure-A of the Rules and the provisions of the Act cannot be made applicable.
- xi. That in accordance with clause 10.1 of the buyer's agreement dated 27.11.2013 possession of the unit was agreed to be handed over within a period of 48 months in addition to a grace period of one year i.e., total 60 months from the date of execution of the buyer's agreement. The complainants were sent an intimation of possession on 11.12.2018 but the complainants have been non responsive and have not come forward for the settlement of dues and conclusion of the sale. The respondent has completed the entire project within the time period as stipulated in the BBA. The complainants evidently made investment at the time of real estate boom and now demands delayed possession charges on account of recession and remote possibility of making immediate profits out of it. However, the burden of delay caused in the grant of the occupation certificate cannot be placed on the respondent. Despite force majeure conditions the respondent has completed the construction of the project within the agreed time limit and

occupancy permission from the Competent Authority was duly applied for on 23.04.2019 and the OC was received on 25.09.2020.

- xii. That it is apparent from the perusal of the aforementioned clause that the respondent is entitled to the extension of time in the instant case as the delay of more than one year in the grant of Occupation certificate is not attributable to the respondent. The respondent herein would also like to bring to the notice of this Hon'ble Authority that the year 2020 has been a year marked by the spread of coronavirus in the entire world and a nationwide lockdown was imposed in the country. The situation has been unprecedented and we have still not been able to release ourselves from the clutches of this pandemic. It is most likely on account of this reason that the grant of the occupation certificate was delayed to such an extent. Be whatever the reason, the respondent in no case can be held responsible/accountable for the delay that has taken place in the grant of the occupation certificate by the relevant/competent authorities in the instant case.
- xiii. That the construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent developer. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on

account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 02.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale.

- xiv. That the complainants have committed various defaults in the making of the payment in terms of the apartment buyer's agreement dated 27.11.2013. The conduct of the complainants clearly highlights the fact that the complainants had no interest or intention to conclude the sale owing to the changing economic conditions and recession. The moment the complainants realized that conclusion of the sale in his favour may not benefit him much anymore, he now wants to take undue advantage of his own wrong.
- xv. That the conveyance deed is binding in nature as stipulated in clause 5 of the conveyance deed and the complainant in the instant case has committed a fundamental and deliberate breach of the terms and the conditions of the conveyance deed. The delay in the execution has been deliberate on part of the complainants with a sole motive of making undue profits by way of instituting a false case of loss of rent/profits and raising claim of

interest/damages to benefit out of his own wrong of not fulfilling the obligations in terms of the agreement. The complainants are trying to derive undue enrichment in the facts and circumstances of the case. The non-performance of the obligations as stipulated in the agreement is wilful, deliberate and improper on the part of the complainants and the complainants cannot be permitted to take advantage or benefit on account of his own wrongful acts/omissions.

- xvi. That the complainants have levelled various false and frivolous allegations with regards to trade practices etc. which is not the case at all and it is submitted that this Hon'ble Authority has no jurisdiction to decide such allegation.
6. 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:

7. 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

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 complete 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) The promoter shall-

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act of 2016 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. Finding on objections raised by the respondent:

F.I Objection regarding the force majeure conditions:

11. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain environment restrictions, orders of various courts, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour, increase in cost of construction material and non-payment of instalments by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of

the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and the promoter is required to take the same into consideration while launching the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot 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 based on aforesaid reasons and the plea advanced in this regard is untenable.

F.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

12. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

13. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself.

G. Finding on the relief sought by the complainants:

- G.I Direct the respondent to pay the delay interest from the date of payment till date of possession and allotment and conveyance deed of the basement parking as the same has not been provided till date.
- G.II Direct the respondent to waive of any delay payment charges/interest (if any).
15. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.
16. 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."

17. Clause 10.1 of buyer's agreement dated 27.11.2013 provides for handing over of possession and is reproduced below:

10.1 Schedule for possession of the said apartment

The developer/company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said building/said apartment **within a period of four years (48 months) from the date of execution of this agreement** unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement.

(Emphasis supplied)

18. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within 48 months from the date of execution of the agreement i.e., 27.11.2013. Thus, the due date of handing over of possession comes to 27.11.2017.

19. **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 subsection (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.

20. 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.
21. 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., 16.12.2025 is @ 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
22. 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.
23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. On 25.07.2024, the respondent has filed an application for dismissal of complaint and brought to the notice of the Authority that the complainants have taken the physical handover of the unit on 11.11.2022 and thereafter conveyance deed has also been executed on 09.03.2023 which was registered on 19.04.2023 and hence the complainants are not entitled to delayed possession as the conveyance deed was executed prior to the filing of the complaint. The complainants have filed a reply to the application for

dismissal of complaint and admitted that though the possession was taken by the complainants under duress but on inspection it was found that the unit is not habitable, moreover the amenities as specified in buyer's agreement were not provided to the complainants. So, the complainants are entitled for delayed possession charges as well as the amenities as promised by the respondent.

25. 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 due date of handing over of possession was 27.11.2017 but the possession of the unit was handed over on 11.11.2022 after obtaining occupation certificate on 25.09.2020 and the conveyance deed was executed on 09.03.2023. Thus, the date of physical handover can be considered as a valid offer of possession i.e., 11.11.2022. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from the due date of handing over the possession i.e., 27.11.2017 till when the complainant has taken over the physical possession of the unit i.e., 11.11.2022 at prescribed rate i.e., 10.80 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. The respondent may adjust an amount, if any paid on account of assured return.

- G.III Direct the respondent to handover the clubhouse/community centre to RWA and provide delay interest charge from date of payment till opening of club and handover to RWA.**
- G.IV Direct the respondent to handover the common areas and transfer of all accounts along with all relevant documents to the RWA.**

26. As per section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot or apartment to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans. The relevant portion of section 17(1) is reproduced below for the ready reference:

17. Transfer of title-

(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, in the real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate.

27. In the present complaint, the occupation certificate was received on 25.09.2020 and conveyance deed was executed on 09.03.2023. Thus, the respondent is directed to handover the common areas along with relevant documents to the association of allottees within 30 days from the date of this order.

G.V Direct the respondent to raise electricity bills and payments of maintenance as per the existing tariff norms and policies for both electricity meter and power backup.

28. The Authority has gone through the apartment buyer's agreement dated 27.11.2013 and observed that total price includes basic sale consideration, Preferential Location Charges(PLC)(if the unit is preferentially located), External Development charges(EDC), Internal Development charges(IDC), IFMS, maintenance charges, stamp duty, registration and incidental charges

as well as expenses for the execution of agreement and conveyance deed, taxes and cesses, cost for electric and water meter as well as charges for water and electricity connection and consumption, club membership fees and club charges and escalation charges. In clause 1.5 of the buyer's agreement, the complainants agreed to pay a total amount of Rs.10,50,500/- as additional charges on account of EDC, IDC, IFMS, club membership charges and escalation charges.

29. First of all, the buyer's agreement is a pre-RERA agreement and after going through the pleadings of the complainants and relevant clauses of apartment buyer's agreement dated 27.11.2013, the Authority has observed that the afore-mentioned charges are specifically agreed between the parties, thus the respondent can charge as per the agreed terms of the buyer's agreement dated 27.11.2013.

G.VI Direct the respondent to conduct a structural audit through an independent agency to ascertain the structural integrity of the project.

30. As per section 14(3) of the Act of 2016, in case any structural defect or any other defect in workmanship, quality or provision of services as per the agreed terms and it is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, the promoter has to rectify such defects within 30 days. Section 14(3) of the Act of 2016 is reproduced below for ready reference:

"In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provide under this Act."

31. In the present complaint, the unit was handed over to the complainants on 11.11.2022 and the above sought relief was brought to the notice of the respondent on 07.03.2024 by way of filing of this complaint which is well

within the 5 years period from the date of handing over of possession. As per section 14(3) of the Act of 2016, the allottee is entitled for the structural audit in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter.

G.VII Direct the respondent to reimburse litigation cost of Rs.1,50,000/- to the complainants as they are constrained to file the same because of the callous and indifferent attitude of the respondent.

32. The complainants are seeking relief w.r.t compensation in the aforesaid relief, **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. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G.VIII The complainants should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondent.

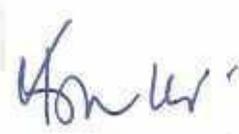
33. In the present complaint, the stamp duty and registration charges for the execution of the conveyance deed was included in the total price of the unit as mentioned in the buyer's agreement dated 27.11.2013 which is a pre-RERA agreement and the same has been signed by the complainants. Also, the conveyance deed was executed on 09.03.2023. Thus, no directions in this regard can be effectuated at this stage.

H. Directions of the authority:

34. 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 interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.80% p.a. for every month of delay from the due date possession i.e., 27.11.2017 till actual handing over of possession i.e., 11.11.2022 as per section 18(1) of the Act of 2016 read with rule 15 of the rules after adjusting an amount, if any, paid on account of assured return.
 - ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - iv. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
35. Complaint stands disposed of.
36. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 16.12.2025