

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

**Complaint no.** 6280 of 2024  
**Complaint Filed on** : 23.12.2024  
**Order pronounced on:** 23.12.2025

**Seema Mittal**

R/o: A-71, Himalayan Residency Plot No-10, Sector-22,  
Dwaraka, Delhi-110077

**Complainant**

**Versus**

**Brahma City Private Limited**

R/o: Flat No-B-8, Cabin No-11, Ansal Tower 38, Nehru  
Place, New Delhi-110019

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman  
Member**

**APPEARANCE:**

Shri Sanjeev Dhingra (Advocate)  
Shri Venket Rao (Advocate)

**Complainant  
Respondent**

**ORDER**

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

**A. Unit and Project-related details:**

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

| S. N.  | Particulars  | Details   |  |  |
|--|--|---|--|--|
| 1.   | Name of the project                                      | Miracle Mile, Sector 60, Gurugram   |  |  |
| 2.   | Nature of the project                                    | Commercial Project  |  |  |
| 3.   | RERA Registered/ not registered                          | 327 of 2017 dated 06.03.2023 valid upto 20.08.2025  |  |  |
| 4.   | License no. and validity                                 | 64 of 2010 dated 21.08.2010   |  |  |
| 5.   | Unit no.   | <table border="1"> <tr> <td>ATM-6,<br/>Ground Floor,<br/>admeasuring<br/>227.76 sq. ft.</td> <td>ATM-3,<br/>Ground Floor,<br/>admeasuring<br/>269.10 sq. ft.</td> </tr> </table> <p><i>Note: Intimation by respondent and acceptance by complainant about change in unit no. vide letter dated 07.6.2018 at page 14-15 of complaint and pg.24 of reply</i></p>  | ATM-6,<br>Ground Floor,<br>admeasuring<br>227.76 sq. ft. | ATM-3,<br>Ground Floor,<br>admeasuring<br>269.10 sq. ft. |
| ATM-6,<br>Ground Floor,<br>admeasuring<br>227.76 sq. ft. | ATM-3,<br>Ground Floor,<br>admeasuring<br>269.10 sq. ft. |   |  |  |
| 6.   | Date of Booking Application                              | 08.03.2013<br>[Pg.20 of reply]  |  |  |
| 7.   | Date of Allotment  | Not on record   |  |  |
| 8.   | Date of Registration of Agreement to Sale                | 02.08.2019<br>[Page 16 of complaint]  |  |  |
| 9.   | Possession clause  | <p><b>7.1 POSSESSION OF THE COMMERCIAL UNIT:</b></p> <p><i>7.1 ..."The Promoter assures to hand over possession of the Commercial Unit as per agreed terms and conditions on or before 31.03.2022 unless there is delay due to "force majeure", court orders, government policy/guidelines, decisions affecting the regular development of the project.</i></p> <p style="text-align: right;"><i>[Emphasis Applied]</i></p> |  |  |

|     |  |   |
|-----|--|---|
|     |  | [Page 34 of complaint]  |
| 10. | Due date of possession                         | 31.09.2022<br>[Including 6 months grace period.]<br><i>[Inadvertently in the proceedings dt. 23.12.2025 due dt of possession was mentioned as 31.03.2022, which is without grace period.]</i> |
| 11. | Total sale consideration                       | Rs.58,05072/-<br>[As per Conveyance Deed at page 66 of complaint]   |
| 12. | Amount paid by the complainant                 | Rs.67,95,210/-<br>[As per SOA dt. 17.07.2025 at page 289 of reply]  |
| 13. | Occupation certificate /Completion certificate | 16.08.2023  |
| 14. | Offered possession along with final demand     | 08.11.2023<br>[Page 56 of complaint]  |
| 15. | Date of delivering physical possession         | 08.07.2024  |
| 16. | Date of Conveyance Deed Registration           | 06.06.2024<br>[Page 66 of complaint]  |

**B. Facts of the complaint:**

3. The complainant is making the following submissions:

- a. That on 09.03.2013 respondent was approached by the complainant in relation of booking of ATM shop/unit bearing no. ATM-06, ground floor in the project name "MIRACLE MILE" situated at Sector-60, Brahma City Gurugram, Haryana and in pursuance of the same, complainant paid the booking amount with cheque bearing no. 390631 dated 04.03.2013 drawn on ICICI Bank of Rs.2,27,760/- in favour of respondent.
- b. That on 07.06.2018 respondent illegally without any consent from the complainant change the basic sale price, ATM shop number from ATM 6

- to ATM 3 and area from 227.76 square feet to 269.10 square feet in the same project. The complainant had no option except to choose the above said changes and under pressure gave her consent for the same.
- c. That on 02.08.2019 That complainant was shocked when received the builder buyer agreement/Agreement for sale in which again they illegally without any consent from the complainant change the Basic sale price, shop number and finally allotted the shop/Unit bearing No.GF-71, Block- M on ground floor and in the same project name "MIRACLE MILE" situated at Sector-60, Gurugram, Haryana, admeasuring 222.56 square feet. The respondent pressurized the complainant to entered into an Agreement for Sale with the respondent. As per clause 7.1 of the said agreement, respondent was liable to handover the possession of the said unit/shop till 31.03.2022 to the complainant/Allottee as per the terms of this Agreement. The agreement for sale is registered agreement vide Vasika No. 7573 dated 02.08.2019.
- d. That as per clause 7.1 of the agreement for sale the respondent has failed to handover the physical possession of the shop/unit till 31.03.2022. Clause 7.1 of the agreement for sale is reproduced as under for your reference: -

*"Subject to timely payment of all instalments and ensuring compliances/struct adherence by the Allottee, the Promoter agrees and understands that timely delivery of possession of the Commercial Unit to the Allottee and the General Common Areas of the Project to the Association of Allottees as provided under Rule 2(1)(f) of Rules is the essence of the Agreement.*

*The Promoter assure to hand over possession of the Commercial Unit as per agreed terms and conditions on or before 31.03.2022 unless there is delay to "force majeure" court orders, government policy/guidelines, decision affecting the regular development of the project. If the*

*completion of the project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Commercial Unit.....”*

- e. That on 08.11.2023 respondent without completion of the shop/unit had offered the possession of the shop/unit bearing No.GF-71, Block- M on ground floor and in the same project name “MIRACLE MILE” situated at Sector-60, Gurugram, Haryana, admeasuring 222.56 square feet and in respect of that complainant paid the whole amount as per demand raised by the respondent along with stamp duty charges.
- f. That till 14.05.2024 an amount of Rs. 67,95,210/- i.e., total sale consideration was paid by the complainant to the respondent in instalments towards the payment of the shop/unit.
- g. That on 06.06.2024 the conveyance deed was executed in favour of the complainant by the respondent vide Vasika no. 4505 in the office of Sub Registrar Wazirabad, Gurugram.
- h. That on dated 08.07.2024 respondent delivered the physical possession of the unit/shop. The respondent delayed in delivering the possession for more than two (2) years and 3 month, with the physical possession being delivered on 08.07.2024. The respondent handover the physical possession of the shop/unit without giving any delay possession charges to the complainant.
- i. That present complaint before the Authority arises out of the consistent and persistent non-compliance of the respondent herein with regard to the deadlines as prescribed under the shop/ flat agreement for sale executed between the parties.
- j. That acts of the respondent here in have caused severe harassment both physically and mentally and that respondent has duped the complainant

hard earned money invested by the complainant here in by its act of not handing over the physical possession on time.

- k. That the complaint filed by the complainant here in is within the limitation period and complainant has paid the fee as required under law.

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

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

I. Direct the respondent to pay the delay possession charges by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017 on the entire deposited amount which has been deposited against the Shop/property in question so booked by the complainant till the date of handover of physical possession of the Shop/unit i.e., 08.07.2024.

II. Direct the respondent to pay Rs. 1,00,000/- towards litigation charges.

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) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

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

i. The purported complaint is not maintainable against Brahma City Pvt. Ltd. (hereinafter referred to as the respondent) as it miserably fails to bring on record any deficiency in service or unfair trade practice on its part: or any cause of action against Respondent, in any manner whatsoever, within the meaning of RERA Act, 2016.

ii. That the complainant vide provisional application form dated 08.03.2013 applied for a commercial unit no. GF ATM 06, Ground Floor, approx.

- admeasuring area 227.76 sq. ft. in the project '*Miracle Mile*' in Brahma City Sector-60, Gurugram, Haryana and paid the booking amount of INR.2,27,760/- vide cheque no. 390631 dated 04.03.2013.
- iii. Subsequently, the unit got renumbered from ATM-06, ground floor to ATM-03, Ground Floor and the size of the unit was increased from approx. admeasuring area 227.76 sq. ft. to 269.10 sq. ft. That the intimation letter regarding the change in the unit number and increase in the size of the unit had been sent to the complainant by the respondent vide letter dated 07.06.2018.
- iv. That there has been a modification with respect to the size and location of the commercial unit allotted to the complainant. as such, the complainant was allotted unit no. atm-03, situated on the ground floor, having an approximate super area of 269.10 square feet.
- v. However, pursuant to subsequent discussions and mutual understanding between the parties, the said unit was re-designated and substituted with commercial unit no./shop GF-71, located on the ground floor, sector-60, block-M, having a revised approximate super area of 222.56 square feet. That the said substitution and adjustment in area was made with the consent of the complainant, and no objection was raised at the time of execution of the Agreement or thereafter. The complainant was fully aware of the revised specifications of the commercial unit and accepted the same without protest. That the unit was altered due to revision of layout cum demarcation plan by DTCP and as per the clause X of the application form dated 07.06.2018 the complainant has given her consent for such changes. In the meanwhile, on no occasion did the complainant seek an exit from the project and after the lapse of so many

years, by way of the present *mala fide* complaint, are trying to arm twist the respondent for their illegal gains.

- vi. That on 02.08.2019, the complainant entered into an agreement for sale with the respondent for commercial unit no. GF-71 in the project Miracle Mile.
- vii. That as per clause 7.1 of the agreement for sale dated 02.08.2019 the due date of possession of the commercial unit was 31.03.2022 subject to *force majeure events* which may affect the regular development of the project thereby contributing to delay in handing over possession of the unit. The relevant clauses in relation to *force majeure* events and schedule for possession in the agreement for sale are reproduced as under for ready reference and convenience of the Authority:

*"DEFINITION*

*(p) "Force Majeure Event" means any event or circumstances beyond the reasonable control of the promoter of the Promoter which cannot be prevented, caused to be prevented, and which adversely affects the Promoter's ability to perform including but not limited to-*

- (i) any act of God i.e., fire, drought, earthquake, cyclone, epidemics, natural disasters,*
- (ii) Explosion, accident, air crash, war, riot, hostilities of war, curfew, civil commotion, act of terrorist,*
- (iii) strike or lock outs, industrial disputes,*
- (iv) non-availability of cement, steel or other construction/raw material due to strikes of manufacturers, suppliers, transports or other intermediaries or due to any reason whatsoever,*
- (v) the promulgation of or amendment in any law, rules or regulation or the issue of any injunction, court order or direction from any government or statutory authority,*
- (vi) any litigation, order or rule or regulation made or issued by the government authority or if any government authority refuses, delays, withholds, denied the grant of necessary approvals/certificate for the project or in any matter, issues relation to such approvals, permissions,*

*notices, notifications by the Competent Authority becomes subject matter of any suit/writ before any court/tribunal, (vii) any other cause (whether similar or dissimilar to the foregoing) or any other event or reason which is beyond the control of or unforeseen by the Promoter.*

...  
*7.1 Schedule for the possession of the commercial unit- Subject to the timely payment of all instalments and ensuring compliance/strict adherence by the Allottee, the Promoter agrees and undertakes that timely delivery of possession of the commercial unit to the Allottee and the General Common Area of the project to the Association of Allottees as provided under Rules 2(1)(f) of Rules is the essence of the Agreement.*

..."

- viii. That the respondent offered the possession of the subject commercial unit to the complainant in a time bound manner and without any delay.
- ix. Even otherwise, without prejudice it is humbly submitted that if there was any delay it was covered under the aforesaid force majeure clause and the events pertaining to force majeure have been detailed out in the subsequent paragraphs.
- x. That the respondent is also eligible for the exemption of 6 months while calculating the due date of handover as per the Agreement for Sale as per RERA notification bearing No. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 due to outbreak of Covid-19.
- xi. That the respondent acted bona fide to complete the construction of the project in a time bound manner and even executed the conveyance deed dated 06.06.2024 in favour of the complainant, which conveyance deed was executed and accepted by the complainant without any demur or protest and without reserving any rights or remedies qua the purported misconceived cause of action sought to be made basis of the present complaint.

- xii. That, various demand notices were issued to the allottee/complainant inter alia dated 29.08.2019 and 04.09.2019. Furthermore, a final reminder letter was issued on 27.09.2019. Further, despite no obligation to continue to the allotment in favour of the complainant, the respondent out of fairness and bona fide again issued additional demand notices on 18.02.2020 and 07.01.2023, making repeated efforts to follow up with the complainant regarding the payment of outstanding dues. However, the complainant failed to comply with the aforementioned demand notices as per the agreed terms of the agreement for sale dated 02.08.2019.
- xiii. That as per clause 5 of the agreement for sale dated 02.08.2019, the complainant was under an obligation for remitting timely payment as per the payment plan opted by the complainant themselves for enabling the respondent to deliver the possession of the commercial unit within the expected time.
- xiv. That as such the present complaint even otherwise deserves to be dismissed at the outset being without basis and without cause of action. The complainant cannot maintain the present complaint based on principles of estoppel and waiver, inasmuch as the complainant have accepted the possession and conveyance deed of the subject unit without demur or protest. The complainant had not sought any delay possession charges or adjustments at the time of execution of the conveyance deed or handover of possession. Further, without prejudice to the contention that there is no delay in handing over of possession, even otherwise, in equity, the complainant being itself guilty of delay in making payments as per the agreed schedules is estopped from claiming any delay possession charges.

- xv. At the outset, the respondent humbly submits that the present complaint is not maintainable for more than one reasons, as mentioned hereinbelow.
- xvi. Brahma City is an integrated township project (hereinafter referred to as the "said Project"). The development of the said Project is steadily going on. A Licence No. 64/2010 dated 21.08.2010 was issued by the Director of Town and Country Planning, State of Haryana for the development of the land belonging to the respondent for a residential township/ plot. The said license was granted in favour of the Respondent along with some individual landowners and other land-owning companies. The said license was transferred in favour of the respondent by letter dated 18.09.2012 issued by DTCP and a copy of the letter was marked CC to all the individual landowners and other land-owning companies.
- xvii. There were inter se disputes between the Respondent and its associate entities (Brahma entities) on the one part and 'Krrish Realtech Private Ltd.' along with their associated entities (Krrish entities) on the other part. The said issues largely arose on account of unauthorized and illegal acts of one Mr. Amit Katyal in entering into illegal transactions without authority, appointing Directors to the Board of BCPL (then Krrish Buildtech Pvt. Ltd.) etc., unauthorized and illegal actions on the part of the Krrish Realtech Private Ltd. and associate entities, in their own name, as well as in the name of the respondent.
- xviii. The aforesaid issues resulted in CLB proceedings initiated by both sides against each other in year 2011, apart from other complaints before other authorities in or around early 2011. That during the pendency of the CLB proceedings, all the disputes between the Krrish entities on the one part and the Brahma entities on the other part, vis a vis the present Project,

came to be settled and resolved in terms of the Settlement agreement dated 06.08.2012. it is further submitted that in view of the Settlement Agreement dated 06.08.2012, the respective land areas/plots of each of the parties was bifurcated and segregated into "Brahma Allocation" and "Krrish Allocation" respectively.

- xix. The said settlement agreement was placed before the Hon'ble Company Law Board and by order dated 09.08.2012, the Company Law Board was pleased to take the same on record, and dispose of the pending petitions between the parties, in terms of the said Settlement Agreement dated 06.08.2012. The parties are therefore bound by the terms of the Settlement Agreement as well as the order dated 09.08.2012 passed by the Hon'ble Company Law Board recognizing the said Settlement Agreement as binding between the parties. The Company Law Board inter alia directed as under:

*"Settlement Agreement dated 06.08.2012 is perused and taken on record and the same shall form part and parcel of the present order and the parties are directed to be bound by the terms and conditions of the Settlement Agreement dated 06.08.2012. Both parties shall have uninterrupted and exclusive right in respect of their respective allocations in terms of the Settlement Agreement."*

- xx. Thereafter, in view of the obligations/responsibilities under the Settlement Agreement dated 06.08.2012 not being fully met by the Krrish entities, on account of intervening circumstances, an Addendum dated 31.10.2015 came to be executed between the parties to the Settlement Agreement dated 06.08.2012. Under the Addendum dated 31.10.2015, inter alia it was further agreed upon that the obligation to develop and construct their respective allocations i.e., the Brahma Allocation and the Krrish Allocation shall be that of the respective parties. Furthermore, any

development and construction have to be carried out at their own cost and responsibility, without creating any liability of any nature on the other party in any manner. It was further agreed and understood between the parties that neither party shall be liable to fulfill any obligation towards any prospective buyer/s in respect of the other party's allocation.

- xxi. In the beginning of the year 2015, the License No. 64 of 2010 was quashed by the order dated 05.02.2015 of the Hon'ble High Court of Punjab & Haryana at the instance of a third party in CWP 27665 of 2013 titled 'Fondant Propbuild Pvt. Ltd. & Ors. vs. State of Haryana & Ors.' with the direction to the competent authorities to reconsider the license application afresh.
- xxii. That vide letter and email dated 24.02.2015 the respondent duly informed the complainant about the judgment dated 05.02.2015 passed by Hon'ble High Court of Punjab and Haryana in writ petition filed by Fondant and Group.
- xxiii. The order of the Hon'ble High Court of Punjab & Haryana was assailed before the Hon'ble Supreme Court of India in SLP (C) CC No. 4115/2015, which Special Leave Petition was disposed off with the direction that the Directorate of Town & Country Planning, Haryana shall consider the application for licence on behalf of the respondent no. 1 uninfluenced by the observations, if any, in the impugned judgment of the Hon'ble High Court of Punjab & Haryana.
- xxiv. That the complainant was well aware of the stay on license. The said aspects were also highlighted to complainant by the respondent vide emails dated 16.04.2015. As such, the respondent cannot be made liable for the delay or failure due to reasons beyond its control.

- xxv. That the construction activities at the project site were put in abeyance and no further activity could be carried out for a while. Thereafter the respondent sought approvals regarding restoration of the license and compliances were submitted by the respondent from time to time with constant follow ups with the concerned statutory authorities. That Director General, Directorate of Town & Country Planning, Haryana vide order dated 02.12.2015 restored the license no.64 of 2010 of the respondent for a revised area of 141.66875 acres as against original license of 151.569 acres.
- xxvi. That vide letter and email dated 15.05.2015 and further email dated 18.12.2015 the respondent informed the complainant that " we are happy to inform you that the office of Director General Town & Country Planning, Haryana (DTCP) has reviewed our Application for license afresh, and after considering all the documents and in accordance with applicable statues have vide their Order No. LC-2365IPA(SN)12015123665 Dated 02.12.2015 restored License No. 6412010 as per terms and conditions stated therein an area measuring 141.66875 acres as per revised land schedule".
- xxvii. Thereafter, the Director Town and Country Planning Department finally approved the revised layout-cum-demarcation plan dated 02.11.2016 along-with sanctioning the zoning plan dated 07.07.2017 of the said Project. The respondent also obtained sanction building plans to develop the Miracle Mile Project on the plot vide memo no. 507 dated 16.01.2018 for construction of commercial units.
- xxviii. That as aforementioned the unit got renumbered from ATM-06 to ATM-03, ground floor and the size of the unit was increased from approx. admeasuring area 227.76 Sq. Ft. to 269.10 Sq. Ft. It is pertinent to note

that the intimation letter regarding the change in the unit number and increase in the size of the unit has been sent to the complainant vide letter dated 07.06.2018. It is respectfully submitted that there has been a modification with respect to the size and designation of the commercial unit allotted to the complainant. The complainant was allotted unit no. ATM-03, situated on the ground floor, having an approximate super area of 269.10 square feet. However, pursuant to subsequent discussions and mutual understanding between the parties, the said unit was re-designated and substituted with commercial unit no./shop GF-71, located on the ground floor, Sector-60, Block-M, having a revised approximate super area of 222.56 square feet.

- xxix. That basis of the aforesaid facts, the curing of the said additional period and resultant deficiency was out of control of the respondent company, i.e., M/s Brahma City Pvt. Ltd. as such, on account of the inability of the respondent company to inter alia cure the deficiencies which were beyond its control.
- xxx. As per the HARERA notification bearing No. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 the Authority had granted extension for 6 months for the project which completion date, revised completion date or extended completion date as per registration expired on or after 25.03.2020 due to the outbreak of COVID-19 which is a calamity caused by the nature and is adversely affecting the development of the project. That the due date of possession of the commercial unit as per the terms of the agreement of sale was 31.03.2022 which is after 25.03.2020 therefore, the respondent is clearly entitled for extension of six months as a force majeure for the outbreak of Covid19.

- xxxii. Therefore, without prejudice and on a demurrer, the aforementioned force majeure circumstances beyond the control of the respondent company prevented the respondent from fully completing its part of the obligations. The same have a material bearing on the adjudication of the present complaint and it is therefore most humbly submitted that the Authority may holistically consider the said facts before passing any order/judgment in respect of the present complaint.
- xxxiii. That the respondent has offered the possession of the commercial unit to the complainant on 08.11.2023 and further requested for the payment of the final instalment. Without prejudice it is submitted that the respondent is also entitled to cover the delay under the force majeure clause. The conveyance deed pertaining to the aforesaid commercial unit was duly executed on 06.06.2024, thereby effectuating the legal transfer of ownership in favour of the complainant. The period of time taken from the date of offer of possession on 08.11.2023 to 06.06.2024 is not attributable to the respondent and it is settled law that no liability can accrue onto the respondent once the offer of possession is duly made to the allottee.
- xxxiiii. That the execution of the said conveyance deed signifies the final transfer of title and ownership of the unit in favour of the complainant, in accordance with the terms and conditions set forth in the agreement for sale and other related documents. The execution of the conveyance deed also evidences that the necessary formalities have been completed, and the complainant has accepted the terms without any protest or reservation at the time of execution.

#### **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 the entire Gurugram District for all purposes 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 the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

10. Hence, given 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 relief sought by the complainant:**

**F.1 Direct the respondent to pay the delay possession charges by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017 on the entire deposited amount which has been deposited against the Shop/property in question so booked by the complainant till the date of handover of physical possession of the Shop/unit i.e., 08.07.2024.**

11. The complainant had applied for allotment of a commercial unit in the project namely "Miracle Mile", situated at Sector-60, Gurugram, being developed by the respondent. Pursuant thereto, the respondent issued an allotment letter in favour of the complainants, thereby intimating the allotment of unit no. ATM-6, ground floor, admeasuring 227.76 sq. ft. Subsequently, vide intimation letter dated 07.06.2018, the respondent informed the complainants regarding a change in the allotted unit from unit No. ATM-6, ground floor, admeasuring 227.76 sq. ft., to unit no. ATM-3, ground floor, admeasuring 269.10 sq. ft. The said change was duly accepted by the complainants vide their letter dated 07.06.2018. Thereafter, an agreement for sale was executed between the parties on 02.08.2019 for a total sale consideration of ₹58,05,072/-. It is submitted that the complainants have paid a total sum of ₹67,95,210/- towards the said unit.
12. As per documents available on record, the respondent has offered the possession of the allotted unit on 08.11.2023 i.e., after obtaining of occupation certificate from competent authority on 16.08.2023. The complainants took a plea that offer of possession was to be made on or before the due date of possession i.e., 31.03.2022 as per clause 7.1 of agreement for sale, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
13. In the present complaint, the complainants intend to continue with the project and are seeking possession of the unit along with 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***

*"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."*

**14. Due date of handing over possession:** In terms of clause 7.1 of the Agreement for sale executed between the parties, the promoter has proposed to handover the possession on 31.03.2022. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020, the completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 31.03.2022 i.e., after 25.03.2020. Therefore, period of 6 months is allowed. In view of the above, the due date of handing over of possession comes out to be 31.09.2022.

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

The complainants are continuing with the project and seeking delay possession charges. Proviso to Section 18 provides that where an allottees 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.*

16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules *ibid*, 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.
17. 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., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*  
*Explanation. —For the purpose of this clause—*
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

20. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 7.1 of the agreement for sale dated 02.08.2019, and the due date comes out to be 31.09.2022 [including 6 month grace period.]. Occupation certificate was granted by the concerned authority on 16.08.2023. 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 subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the agreement for sale dated 02.08.2019 to hand over the physical possession within the stipulated period.
21. 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 16.08.2023. The respondent offered the possession of the unit in question to the complainants only on 08.11.2023, 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. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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. The Conveyance Deed was registered on 06.06.2024 in respect of unit in question.

22. 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 allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 31.09.2022 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; 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, *ibid*

**F.II Direct the respondent to pay Rs. 1,00,000/- towards litigation charges.**

23. The complainant is seeking relief of litigation 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 an allottee is entitled to claim compensation & litigation charges 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 & litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in Section 72.

**G. Directions issued by the Authority:**

24. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 10.80% per annum from the due date of possession i.e., 31.09.2022 till valid offer of possession i.e., 08.11.2023 plus two months i.e., 08.01.2024, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.

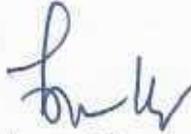
II. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid.*

25. Complaint stands disposed of.

26. File be consigned to the Registry.



Phool Singh Saini  
Member



Arun Kumar  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025



HARERA  
GURUGRAM