BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 2494 of 2025
Date of decision: 13.01.2026

Mr. Amarjeet Anand
Ms. Suruchi Singla
Regd. Address: E-101, Escape Nirvana Country, South City-2, Sector-50, Gurugram, Haryana - 122018 — **Complainants**

Versus

M/s Capital Heights Private Limited
Regd. office: N-8, Ground floor, Panchsheel Park, New Delhi-110017

Haamid Real Estate Private Limited
Regd. office: AIPL Business Club, 5th floor, Golf Course Extension Road, Sector-62, Gurugram-122101 — **Respondents**

CORAM:
Shri Arun Kumar — **Chairman**

APPEARANCE:

Ms Bhavishya (Advocate)	**Counsel for Complainant**
Ms Ankur Berry (Advocate)	**Counsel for Respondent no. 1**
Sh. Dhruv Rohatgi (Advocate)	**Counsel for Respondent no. 2**

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and Project related details:

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

S. No.	Heads	Information
1.	Name and location of the project	'Residences 360', Sector70A, Gurugram, Haryana
2.	Nature of the project	Group Housing
3.	Project area	27.7163 acres
4.	DTCP license no.	16 of 2009 dated 29.05.2009 valid upto 28.05.2024
5.	Name of license holder	Vibhore Home Developers Pvt. Ltd. and 6 others
6.	RERA Registered/ not registered	Registered vide no. GGM/890/622/2024/117 DATED 02.12.2024
7.	Collaboration agreement between R-1 and R-2	14.12.2012 (page 17 of reply filed by R-2)
8.	JDA between R-1 & R-2	03.03.2023
9.	Provisional Allotment letter	25.08.2015 (page no. 15 of complaint)

10.	Apartment no.	1202, Tower- CR-02, 12th Floor (page no. 38 of complaint)
11.	Unit measuring	1976 sq. ft. (super area) (page no. 38 of complaint)
12.	Date of agreement for sale	23.08.2023 (page 36 of complaint)
13.	Possession clause	*5.* *The promoter shall handover the possession of the said apartment within 45 days from the receipt of the total price from allottee.*
14.	Payment plan	*Time linked plan* (at page 69 of complaint)
15.	Due date of possession	07.10.2023 [as per possession clause mentioned in the agreement for sale dated 23.08.2023]
16.	Total sale consideration	Rs.1,41,57,366 /- (as per page no. 66 of complaint)
17.	Amount paid by the complainant	Rs. 48,44,548/- (at page no. 16 of reply filed by R-1)
18.	Reminder's letter sent by R-1	16.10.2014 10.11.2014 25.11.2014 05.01.2015 25.08.2015 07.11.2022(e-mail) 17.06.2025

		[page 19-25 of reply filed by R-1]
19.	Occupation certificate	26.10.2021
20.	Intimation for possession along with demand of Rs.99,00,371/-	07.11.2022 [at page no. 28-31 of reply filed by R-1]

B. Facts of the complaint: -

3. The complainants have made the following submissions: -

a. That the complainants are the original allottee of a unit in the project marketed and developed by the respondents, under the name and style of "The Residences Three Sixty" situated in Sector70-A, Gurugram, Haryana, being developed by respondent no. 1 & 2 as promoter under the license bearing no. 16 of 2009, dated 01.06.2009 and 73 of 2013, dated 30.07.2013.

b. That relying upon the market standing and representations of the respondent no. 2 that the project shall be completed in the year 2016, the complainants applied for allotment of a residential unit on 25.02.2014.

c. That, while oral confirmation of allotment was provided, the Provisional Allotment letter was issued after lapse of 1.5 years, only on 25.08.2015, in respect of Apartment no. 1202 in tower CR-02, having super Area of 1960 sq. ft., for a total sale consideration of rs.1,25,51,840/-. The allotment was declared to be purely provisional and not subject to withdrawal by the complainant, unless a Builder Buyer Agreement was executed.

d. That as per clause 17 of the Allotment letter, the possession of the allotted unit was stipulated to be within 42 months from the casting of raft of the tower, with an additional 180 days of grace period, and further, an "additional grace period" of 180 days, thereby cumulatively allowing

respondents a patently illegal extension of one full year beyond the initial commitment. That imposition of such dual grace period and non-refundable nature of provisional allotment is manifestly arbitrary, one sided and in violation of section 18(1)(a) of the RERA Act, 2016 which mandates compensation for delay in handing over the possession. The Hon'ble Supreme Court in *Pioneer urban Land & Infrastructures Ltd. vs Govindan Raghavan [(2019) 5 SCC 725]* has held that unilateral clauses that imposes undue obligations on homebuyers are unconscionable and unenforceable.

e. That no building plan or layout plan had been approved by the DGTCP or any competent Authority at the time of issuance of allotment and thus, no such plans disclosed or shown to the complainants at the time of booking. This is in direct contravention of section 11(3)(a) of the Act, 2016 which mandates that the promoter shall make available sanctioned plans and layout plans at the time of booking and allotment.

f. That the respondent inserted at clause 18 and annexure A to the allotment letter, illegal reserving rights to levy escalation charges during construction and even during delay caused by the respondents themselves. Such imposition is not only unjust but also violative of the doctrine of legitimate expectation and the statutory bar against unilateral enhancement of consideration after the agreement to sell.

g. That the sale consideration of the unit allotted to the complainants was payable in instalment and all the instalments were duly paid by the complainants as and when demanded by the respondent, however, despite full compliance by the complainant, the respondents failed and neglected to execute BBA for 8 years, since issuance of provisional allotment letter. Moreover, the respondents already collected 30% of the

sale consideration before execution of aby BBA. That as per the statutory mandate under the section 13(1) of the RERA Act, no promoter can be entitled to accept more than 10% of the cost of the apartment without executing a written agreement, thereby rendering the respondents in grave contravention of the RERA Act and rules.

h. That the complainant persistently requested the respondents to share the RERA registration details, DTCP approvals, fire and other NOCs, and the BBA. However, the respondents deliberately delayed and misrepresented facts, with the clear intention to evade regulatory oversight and continue collecting funds from allottees in violation of section 13(1) and section 11 of the act.

i. That after a lapse of more than 7 years from the date of provisional allotment and without registration of the project under RERA, without execution of the BBA, and without securing requisite clearances, the respondent issued a letter dated 07.11.2022 offering possession of the unit with increased super area and demand a sum of Rs.99,00,371/- towards alleged outstanding consideration, increased area charges and additional heads including tax of Rs.5,59,622/-, CMC of Rs.2,36,000/-, EDC of Rs.3,42,998/-, IFMS of Rs.1,96,000/-, Labour cess of Rs.24,141/-, Electrification Charges of Rs.97,084/-, Electric meter charges of Rs.14,750/- and water/sewage charges of Rs.17,978/-. After the inspection of site by the complainant, the site was far from the completion, and no physical possession could have been offered. No Occupation Certificate, Completion Certificate or inspection access was provided. This false representation of readiness for possession amount to fraud and a punishable offence under section 60 and 70 of RERA Act.

j. That after relentless follow-up and harassment, the respondents finally called the complainants to sign and execute the BBA-Agreement to Sell and the same was executed on 23.08.2023, after delay of 8 years. The terms of the BBA are only extremely one-sided and unfairly prejudiced in favour of the respondent, moreover it gives no clarity on the handover of possession of the unit nor it addresses the issue of delay in completion of the project of the respondents have clearly made an attempt to evade all its obligations as mandated under the REEA Act and Rules.

k. That the respondents only applied for the registration of the project that they had been promoting, marketing and collection funds for, in the year 2023, much after the superficial and imaginary "offer of possession" and were finally granted a RERA registration certificate on 02.12.2024 wherein the respondents disclosed that the project shall be completed by 31.12.2025.

l. That as per the conditions imposed upon the respondents, the unit could be sold only on carpet area basis not on super area and thus, since the effective carpet area allotted to the complainants was not increased only super area was increased, the demand for increased area as per letter dated 07.11.2022 and subsequent clause 7 of the BBA, for an amount of Rs.1,15,508/- is illegal, as per the provisions of section 2(k) pf the Act which defines carpet area as the sole basis of sale.

m. Furthermore, the RERA Registration certificate mandates the respondents that the sale consideration shall be inclusive of al taxes and charges, no EDC/IDC or any other charges in the name of clarification, labour cess, sewage and water connection charges etc. are payable by the allottees, except the total sale consideration, thus, the demand towards the same raised vide letter dated 07.11.2022 and subsequent clause 7 of

the BBA, for an amount of Rs.14,88,573/- is illegal (tax of Rs.5,59,622/-, CMC of Rs.2,36,000/-, EDC of Rs.3,42,998/-, IFMS of Rs.1,96,000/-, Labour cess of Rs.24,141/-, Electrification Charges of Rs.97,084/-, Electric meter charges of Rs.14,750/- and water/sewage charges of Rs.17,978/-).

n. Further, the promoter was mandated to make available, at the time of booking and issue of allotment letter, sanction plan, layout plans approved by the competent Authority and stage wise time schedule for completion, however, the same was not presented to the allottees as the same was no approved at the time of allotment.

o. That the acts of deliberate omission and commission constitute a gross breach of statutory duty, unethical trade practices, suppression of material facts, and wrongful enrichment. These are punishable under sections 59, 60, 61, 63, 64 and 70 of the RERA Act, warranting not only monetary penalties but also prosecution and imprisonment of the promoters.

p. That the respondent failed to handover the physical possession of the unit to the complainant(s) till date and thus, the complainants are left with no other option but to approach the Authority to remove illegal charges against the unit of the complainants and seek possession of its unit along with delay penalty charges.

q. That the malafide acts of the respondent have caused grave misfortune and financial harm to the complainant and losses for almost 13 years.

C. Relief sought by the complainants:

4. The complainants have sought following relief:

a. To direct the respondent to hand over the possession along with delay possession charges, from the date of booking till the actual handing over of possession of unit.

b. To direct the respondent to remove the illegal charges to the tune of Rs.16,04,081/- as wrongly demanded in the intimation for possession letter dated 07.11.2022 and subsequent of unit.

c. To direct the respondent to compensate the complainant at the rate of Rs.50,000/- per month since booking of unit, for the monetary losses, harassment and agony caused due to the fraudulent acts of the respondent.

D. Reply filed by the respondent no. 1:

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

a. That the complainants have got no locus standi or cause of action to file the complaint against the respondent no. 1. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the provisional allotment letter dated 25.08.2015 and BBA dated 23.08.2023.

b. Thay the complainants are defaulters and failed to adhere to the payment plan as agreed between the parties. The total sale consideration for the residential unit was agreed at Rs.1,41,57,366/- plus possession related charges whereas till date the complainants paid Rs.48,44,548/-. That further the last payment was made by the complainants in the year of 2015, and thereafter no further payments have been made. The complainants agreed to the payment plan attached with the provisional allotment letter, however even after repeated reminders the complainants have chosen to not make payment o time. That such conduct amounts t a clear breach of section 19(6) of the RERA Act, 2016,

which mandates the allottee to make payments in accordance with the terms of the agreement. Further, under section 19(7), the allottee is liable to pay interest at the prescribed rate for any delay in payment.

c. That the complainants have violated statutory and contractual obligations, and defaulted in payments. The complainants are liable to clear all outstanding dues along with applicable interest as prescribed under law and the BBA.

d. That the BBA was executed between the parties on 23.08.2023. The handover of the unit was subject to entire consideration amount along with delayed payment interest. The respondent is willing to handover the possession of the unit subject to the complainants making requisite payments along with interest. Thus, if the complainant failed to discharge their payment obligations, the respondent no. 1 cannot be held responsible for not handing over possession. The clause 7.1 (B) of the BBA specifically stipulated that the allottee is required to make due payment and execute the necessary documents in order to take physical possession. The complainants need to strictly adhere to the terms and conditions of the BBA, clear all outstanding dues along with the applicable interest, and only thereafter shall they be entitled to take physical possession of the unit.

e. That the respondent is duly obtained the OC on 26.10.2021, and thereafter issued the Intimation of possession to the complainants on 07.11.2022. Despite the respondent is willing to handover possession in accordance with law, the complainants failed to make the requisite payments as per the terms of the BBA read with possession letter and the payment plan. Hence, the default lies solely with the complainants.

f. That the respondent issued multiple reminders to the complainants for clearing their outstanding dues on 16.10.2014, 10.11.2014, 25.11.2014, 05.01.2015, 2.08.2015, 22.10.2021, 07.11,2022, 29.11.2023 and 17.06.2025. However, the complainants did not pay any heed to such reminders. Instead of complying with their payment obligations and completing necessary documentation, the complainants have chosen to file the present complaint only with the intent to harass the respondent and waste precious time of the Authority.

g. The respondent, much before the stipulated date, obtained the OC on 26.10.2021 and thereafter issue the intimation of possession on 07.11.2022. This clearly demonstrates that the respondent has complied with all obligations under the BBA in advance of contractual timeline. That it was solely on account of the complainants' failure to clear outstanding payments that physical possession could not be handed over. Instead of complying with payment obligations, the complainants are attempting to take undue advantage of their own default and have filed the present complaint with mala fide intent.

h. That the respondent has raised demands strictly in accordance with the terms and conditions of BBA and as per the agreed payment plan. No demand beyond the contractual framework has ever been raised. The allegation regarding Tax, CMC, EDC/IDC, IFMS, Labour cess, Electrification charges, electric meter charges and water/sewage charges is false, misconceived and untenable. The complainant had duly agreed to bear such charges at the time of signing the provisional allotment letter dated 25.08.2015 from the allottee. Therefore, the demand raised by the respondent is completely in consonance with the contractual terms

mutually agreed with the parties, and no illegality can be attributed to the respondent in this regard.

i. That the present complaint is not maintainable and direct the complainants to clear all outstanding dues along with applicable interest before taking physical possession, impose costs upon the applicable interest before taking physical possession, impose cost upon the complainants for filing a false and vexatious complaint.

E. Reply filed by the respondent no. 2

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

a. That the complaint is liable to be dismissed for the reason that the complainants have not approached this Authority with clean hands. The complainants are guilty of concealment and misrepresentation of facts and have twisted the facts in a manner so as to entangle the respondent no.2 in the disputes and grievances between the complainants and respondent no.1.

b. That the complainants herein have no locus standi or cause of action against the respondent no.2, as the complainants are neither the allottees of the respondent no.2, nor the respondent no.2 has received any sale consideration or part thereof from the complainants. That the entire transaction that has taken place between the complainants and the respondent no.1, the respondent no.2 has endured no benefit from the said transaction or made any representation of any kind to the complainants. The respondent no.2 is liable to be deleted from the array of parties as there is complete mis-joinder of the respondent no.2 in the complaint.

c. That respondent no.2 had entered into a registered Collaboration Agreement dated 14.12.2012, much prior to the coming into the force of the RERA Act, with an intent that the respondent no.1 was to develop a group housing colony over an area admeasuring 1.129 hectares, on the licensed land.

d. That the respondent no. 1 launched the project in the name of "The Residences Three Sixty", under the brand of Capital Heights. The project was never launched under the branding of the respondent no. 2.

e. That the complainants have themselves placed on record a copy of the allotment letter dated 25.08.2015, which document is evidently on the letterhead of respondent no.1, exclusively and has been issued by respondent no.1. The respondent no.2 neither has issued nor is a signatory to the said application form, placed on record. Some of the relevant extracts of the Application Form, clearly depict the representations made by the respondent no.1 to the complainants, which make is evidently clear that the respondent no.2 has neither made any representations, nor is liable for any action, in relation to the transaction between the complainants and the respondent no.1. It is clear from the first recital that is represented to the complainants that the project is being developed by "capital Heights Pvt. Ltd".

f. That from the clause 9 of the allotment letter it is clear that the right to forfeiture of the money is also vested with the respondent no.1 only and not the respondent no.2. Further, from clause 11 of the allotment letter it is clearly represented that the project is being developed by respondent no. 1. Furthermore, clause 15 specifically states that all payments are to be made in the account of respondent no. 1.

g. That as per clause 17 and 18 it is clearly evident that assurances of the date of possession have been given by the respondent no.1, with a clear unambiguous statement that in case of delay, the compensation, if any shall be paid by the respondent no. 1.

h. That the complainants have also placed on record the copy of the agreement for sale dated 23.08.2023, wherein the RESPONDENT NO.1, i.e. "Capital Heights Private Limited" is defined as the Promoter, while the **respondent no.2, being the land owner, is merely the confirming party**.

i. That he recitals of the agreement for sale, further substantiate the case of the respondent no.2 that the entire representation as made to the complainants and the development of the project was done by the respondent no.1, i.e. "Capital Heights Private Limited" and not the respondent no.2.

j. That further, clause 1, clause 2, clause 5, clause 6, clause 7, clause 8, clause 9 and various other clauses of the agreement for sale, as filed by the complainants, clearly and evidently show that whatever representations, assurances, payment demands, receipts that have been made to the complainants, have been made by the "Promoter", i.e. the respondent no.1 Capital Heights Private Limited, under the agreement and not the respondent no.2.

k. That the notice off termination of possession dated 07.11.2022, as filed by the complainants, has also been issued by the respondent no. 1 and not by the respondent no. 2.

l. That he respondent no.1 had entered into another supplementary Joint Development Agreement dated 03.03.2023 with the respondent no.2,

whereby it was once again iterated and affirmed that the respondent no.1 shall keep the respondent no.2, indemnified against all losses arising out of any proceedings or disputes or claims in respect of the agreement.

m. That the entire onus, burden or liability is on the respondent no.1, in respect of the project in question and the complainants herein. Without Prejudice, that in case any liability arises out here from, the same shall be subsumed by the respondent no.1 alone and not the respondent no.2. The respondent no.1, be called upon to apprise this Authority of the true and correct facts and give its assent and affirmation to the Registered Collaboration Agreement dated 14.12.2012 as well as the Agreement dated 03.03.2023, executed between the respondent no.1 and respondent no.2.

n. That 'indemnity' means free from loss. It is a well-settled principle of law that in a contract of Indemnity, the indemnifier undertakes to protect the indemnified from any loss, liability, or legal consequences arising from specific acts or omissions. Once such an indemnity is in place, the indemnified party is not liable for claims or proceedings covered under the indemnity clause. Indian Courts have consistently held that the purpose of an indemnity is to shift the burden of liability entirely onto the indemnifier, thereby absolving the indemnified party from any responsibility for acts committed or obligations assumed by the indemnifier.

o. That in the respondent no. 2, being the indemnified party under the Development Agreement, cannot be held responsible for any obligations, defaults, or liabilities attributable to respondent no. 1. That

these submissions are without prejudice to the fact that the respondent is not aware of the allegations levelled by the complainant.

p. That t is a settled position of law that where a special act is silent about a particular aspect, recourse to the general law can be taken.

q. That no cause of action arises against respondent no. 2 for any aspect of the present project and/or unit, and hence, the name of the respondent no. 2 is bound to be deleted. The name of respondent no. 2 should be struck out from the array of parties. If the same is not done, irreparable harm will be caused to the respondent no. 2. The complaint is, therefore, liable to be dismissed qua the respondent no.2.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the Authority

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

> *"Section 11(4)(a)*
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."*

11. So, in view of the provisions of the Act 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 complainants at a later stage.

G. Findings on the relief sought by the complainants.

G.I. To direct the respondent to hand over the possession along with delay possession charges, from the date of booking till the actual handing over of possession of unit

G.II. To directed the respondent to remove the illegal charges to the tune of Rs.16,04,081/- as wrongly demanded in the intimation for possession letter dated 07.11.2022 and subsequent of unit.

12. The above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

13. In the present matter the complainants purchased a unit bearing no. 1202 in Tower- CR-02 on 12th Floor, admeasuring 1976 sq. ft. in the project 'Residences 360', Sector 70A, Gurugram, Haryana. The complainants only paid an amount of Rs.48,44,548/- against the total

sale consideration of Rs. 1,41,57,366/-. An agreement was executed between the complainant and the respondent no. 1 on 23.08.2023 and respondent no. 2 is the confirming party to the agreement and according to clause 5 of the agreement the respondent was obligated to handover the possession within 45 days after receipt total sale consideration from the allottee as Occupation Certificate of the project was already obtained from the competent Authority. The occupation certificate for the project has been obtained from the competent Authority on 26.10.2021.

14. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

> *"**Section 18: - Return of amount and compensation***
> *(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> *............................*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"*

15. Delay possession charges at prescribed rate of interest: Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> *"**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the*

> *"interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

16. 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;"*

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., 13.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.'

18. The Authority observes that the respondent vide letters dated 16.10.2014, 10.11.2014, 25.11.2014, 05.01.2015, 25.08.2015, 07.11.2022 and 17.06.2025 issued various reminder to the complainant to clear outstanding dues as per agreed payment plan but the

complainants failed to make the requisite payments as per the terms of the BBA read with possession letter and the payment plan

19. Further the respondent no. 1 vide letter dated 07.11.2022 sent letter for intimation for possession along with demand of Rs.99,00,371/-. As per clause 5 of the agreement read with payment plan the complainants are bound to make entire sale consideration within 45 days to take the valid legal possession of the unit but the complainants have not adhered the agreed terms and conditions of the agreement.

20. That as per section 19(6), it is the responsibility of the complainants to make timely payment. Section 19(6) is reproduced below:-

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

21. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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 as per Section 19(7) of the RERA Act, 2016 and same is reproduced below:-

> ***19(7).*** *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

22. Therefore, interest on the delay payments, from the complainant i.e. from the due date of possession i.e. 07.10.2023 as per clause 5 of the agreement dated 23.08.2023, shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

23. 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 complainants are in contravention of the section 19(6) of the Act by not making necessary payment as per the agreement. By virtue of clause 5 of the agreement, the possession of the unit was to be delivered within stipulated time i.e., by 07.10.2023 subject to payment to total sale consideration but till date complainant paid an amount of Rs.48,44,548/- out of Rs.1,41,57,366/-. Further occupation certificate has been received by respondents on 26.10.2021 and possession was duly offered on 07.11.2022. The Authority is of the considered view that there is delay on the part of the complainants to clear outstanding dues amounting to Rs.99,00,371/- as per the terms and conditions of the agreement executed between the parties. Accordingly, it is the failure of the complainants to fulfil its duties, obligations and responsibilities as per section 19(6) and agreed term & condition of agreement.

24. Accordingly, the non-compliance of the mandate contained in section 19(6) of the Act on the part of the complainants is established. As such the complainant is entitled to clear outstanding dues at prescribed rate of the interest @ 10.80% p.a. w.e.f. 07.10.2023 till clearance of all

outstanding dues as per section 19(7) of the Act read with rule 15 of the rules.

G.III. The respondent shall not charge anything from the complainant which is not part of Agreement.

25. The respondents shall not charge anything from the complainants which is not the part of the agreement.

G.IV. To direct the respondent to compensate the complainant at the rate of Rs.50,000/- per month since booking of unit, for the monetary losses, harassment and agony caused due to the fraudulent acts of the respondent.

26. That Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021titled as **M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors**. 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G.VI. Execute Conveyance Deed

27. The Authority observes that the conveyance has been subjected to all kinds of terms and conditions of agreement and the complainants not being in default under any provisions of agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:-

"Section 17: - Transfer of title

17(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, 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 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 date of issue of occupancy certificate."

28. The respondents are under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. The respondents are directed to execute the conveyance deed within one months after clearance of outstanding dues by complainants.

H. Directions of the Authority

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

a. The complainants are directed to pay outstanding dues along with prescribed rate of interest i.e. 10.80% p.a. from the due date of possession i.e. 07.10.2023 till its realization as per section 19(7) of the Act read with rule 15 of the rules.

b. The respondents are directed to hand over the actual physical possession of the unit to the complainants within one month subject to the clearance of outstanding dues by the complainants.

c. The respondents are directed to executed conveyance deed of the allotted unit in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

d. The respondents shall not charge anything from the complainant which is not the part of the agreement.

e. A period of 90 days is given to the complainants & respondents to comply with the directions given in this order failing which legal consequences would follow.

30. Complaint stands disposed of.

31. File be consigned to registry.

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.01.2026