

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

Complaint No: 915 of 2025
Date of filing: 06.03.2025
Date of order: 13.02.2026

1. Meera Sinha
2. Upendra Prasad Sinha

Both R/o: H. No. 506, Sunbreeze Tower – III, Sector – 4,
Vaisali, Ghaziabad – 201010.

Complainants

Versus

M/s Burman Estate Private Limited
[Formerly known as M/s Burman GSC Estate Private Limited]
Having registered office at: B-1/e-24, Mohan Co-
operative Industrial area, Mathura Road, New Delhi-
110044.

Respondent

CORAM:

Shri Arun Kumar

Chairman

Appearance:

Shri Ajay Kumar Singh (Advocate)

Complainants

Shri Vinay Kumar Yadav (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottees 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 complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Gurgaon Spectrum Centre", Sector 82A, Gurugram
2.	Project area	4.4375 acres
3.	Nature of project	Commercial colony
4.	DTCP License	135 of 2008 dated 28.06.2008 Valid up to 27.06.2030
5.	Name of licensee	Dr. Fresh Real Estate Ventures
6.	RERA registered/ not registered	Registered For (Phase-1) (Commercial Project) 222 of 2017 dated 18.09.2017 Valid up to 30.06.2020
7.	Unit no.	810, 8 th floor [Serviced apartments] (As per clause E of BBA at page 26 of complaint)
8.	Unit area admeasuring	663 sq. ft. (super area) (As per clause E of BBA at page 26 of complaint)
9.	Date of agreement for sale	27.03.2017 (As per page 26-61 of complaint)
10.	Draft of rental pool agreement	27.03.2017 (As per page 62-100 of complaint)
11.	Possession Clause	13 Possession and holding charges <i>13.4 The developer proposes to offer the possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of this agreement ["Commitment period"]. The allottee further agrees and understands that the developer shall additionally be entitled to a period of 180 days ("Grace period"), after the expiry of the</i>

		<i>said commitment period to allow for unforeseen delays beyond the reasonable control of the developer.</i> [Emphasis supplied] (As per page 39 of complaint)
12.	Due date of possession	27.06.2021 [27.12.2020 + 180 days] (Note: Due date of possession is calculated 45 months from the date of execution of buyer's agreement with a grace period of 180 days)
13.	Basic sale consideration	Rs.56,27,213/- (As per clause 3.1 of BBA at page 33 of complaint)
14.	Amount paid	Rs.66,81,551/- (As alleged and as admitted in para 13 at page 11 of reply)
15.	Occupation certificate	19.11.2024 (As per page 138-140 of complaint)
16.	Offer of possession [Virtual possession of serviced apartments]	29.11.2024 (page 51 of reply)
17.	Demand letter	29.11.2024 (page 124-126 of complaint)

B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:

- a) That the complainant is a law-abiding citizen of India and residing at the above-said address.
- b) That the respondent is a real estate company having registered offices and corporate offices as mentioned above, engaged in the business of developing residential and commercial projects all over India.
- c) That the complainant is looking for a service apartment in Gurgaon/ NCR and the respondent approached the complainant for booking a service apartment in the commercial project launched by them as "The Spectrum" is situated in

village Shikohpur, Sector- 82A, District- Gurgaon, Haryana. That the complainant visited the project site and after repeated requests and offers made by the respondent, the complainant agreed to book a unit in the said project.

- d) That after inquiring about the said project with a representative of the respondent, the complainant was convinced and expressed his interest in the booking of the unit and asked to provide him details of the payment plan. According to the payment plan the complainant agreed to the construction link plan and a representative of the respondent told the complainant that possession of the said flat will be handed over within 45 months from the date of execution of this agreement.
- e) That the complainant booked a unit no.810 on the 8th floor, in serviced apartment blocked named "The Spectrum" admeasuring 663 sq. ft. super area in the real estate development of the respondent, known under the name of "Gurgaon Spectrum Center" situated in village Shikohpur, Sector- 82A, District- Gurgaon, Haryana promoted and built by M/s Burman GSC Estate Private Limited.
- f) That the complainant paid the booking amount Rs.3,00,000/- vide cheque no. 008676 dated 30.06.2014 to the respondents.
- g) That the respondent raised the demand for more money from the complainant, and to avoid any disputes between the complainant and the respondent, the complainant made the following payments: Rs.2,25,017/- on 30.09.2014, Rs.6,45,188/- on 27.11.2015, Rs.5,00,000/- on 14.10.2016, and Rs.88,043/- on dated 21.10.2016. The complainant continued to make these payments to prevent any conflict. That the respondent kept pressing the complainant to pay repeatedly without executing the builder-buyer agreement. Under this pressure, the complainant paid a total of Rs.17,58,248/-. That the complainant

made several requests to the respondent, urging them to finalize and execute the builder-buyer agreement of the booking but despite repeated requests, the respondent failed to execute the builder-buyer agreement. That the respondent remained unresponsive and silent for the period of 2 years and 9 months.

- h) That after the respondent executed the 'Builder Buyer Agreement' on 27.03.2017 and through this agreement the respondent allotted unit no. 810 on the 8th floor, with a super area of 663 sq. ft., of The Spectrum, situated in village Shikohpur, Sector- 82A, District- Gurgaon, Haryana, Accordingly, a binding contract came into existence in the form of the said builder buyer agreement duly signed by all the parties. The contents of the said agreement with the terms and conditions may kindly be read as part and parcel of this paragraph of this complaint and as per the agreement total Basic Sale Price of the flat is Rs.56,27,213/-.
- i) That as per builder buyer agreement clause 13.4, 'the developer proposed to offer the possession of the service apartment to the allottee within a period of 45 months from the date of execution of the agreement'. That as per the agreement the due date of possession was 27.12.2020, but the respondent failed to hand over the possession of the unit within 45 months and kept silent after getting the above-said payment.
- j) That the respondent sent a letter via letter dated 21.03.2018 informing the complainant that burman group has fully acquired the stake of GSC and now owns the entire company. The project will continue under the name Gurgaon Spectrum Centre, with construction progressing at full speed. The company's name has been changed from Burman GSC Estate Private Limited to Burman Estate Private Limited. The new registered office is at 4th Floor, Punjabi Bhawan, 10-Rouse Avenue, New Delhi-110002. The name change was approved in a shareholders' meeting on 05.03.2018, and the new Certificate of

Incorporation was issued by the Registrar of Companies, Delhi on 15th March 2018.

- k) That as per the payment plan provided by the respondent, the complainant paid the amount as per the demand made by the respondent, complainants made a total payment of Rs.66,81,551/- to the respondent.
- l) That the complainants made all the payments from time to time without any delay and were looking for possession of the said unit as per the agreement but the construction is not as per the agreement.
- m) That the complainants paid a total sum of Rs.66,81,551/- to the respondent. The complainants opted for the construction link payment plan and there was no delay in the payment of installments but the respondent failed to provide possession of the flat as per the agreement.
- n) That the complainants submitted that despite the grace period of 6 months which expired on the 16.06.2021, the project was still not complete. After the expiry of the grace period, the complainants visited many times for the possession and update about the unit but there was no proper response from the respondent, and the respondent did not honor the agreement of the complainants. The respondent failed to fulfill his promise of timely possession.
- o) That the complainants submitted that as per clause 13.5 of the "builder buyer agreement" if the developer fails to offer possession of the service apartment to the allottee on or before the end of grace period, it is liable to pay to the allottee compensation prescribed under applicable laws for every month of delay until the actual date fixed by the developer for offering the possession of the service apartment to the allottee. The allottee shall be entitled to payment/ Adjustment against such delay compensation only at the time of 'Notice of Possession'.
- p) The respondent has notified the complainant that they are in the process of working out the impact of changes in tax rates on its costs after the

implementation of the GST Act 2017 and will inform all its buyers/complainants in due time. The respondent further committed to pass on the benefit accruing to it due to the change in tax structure after the imposition of the GST to the unit holds. The reduction in cost will be adjusted in the last installment. That the respondents have not intimated the impact of changes in tax rate and also did not pass out the benefit accurately the benefit.

- q) That the complainant and other buyers of the project raised an issue about the delay in the project, Service Tax, and GST deduction to the respondent through mail and personal visits, and the respondent kept silent on the said matters.
- r) That due to the deficient and unprivileged services of the respondent, the complainant has suffered extreme loss of time, money, and reputation. The delay in possession by the respondent has caused immense harassment and mental agony besides huge financial loss to the complainant.
- s) That in view of the above-said facts and circumstances of the case the complainant is looking for the possession with compensation for delay with interest till the date of possession.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
 - I. Direct the respondent to provide the possession of the unit with delayed interest till the date of possession to the complainant;
 - II. Direct the respondent to pass on the benefit accruing due to the change in tax structure after imposition of GST, to the complainant;
 - III. Award cost of litigation of Rs.80,000/- in favour of the complainant and against the respondent;
 - IV. Pass any other order in the interest of equity and justice.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

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

- a) That it is submitted that before booking, the complainant made several visits to the office of the respondent to know about the details of the project titled as "The Spectrum", Sector -82A, located at Sector 82-A, Gurugram, Haryana. That the complainant enquired about the veracity of the project of respondent and had immense interest to invest in the project for profits/financial gains, as it is a commercial project. Therefore, the complainant came forward to invest in the project of respondent to extract speculative gains. That the complainant booked a unit by paying the requisite booking amount in the project of the respondent subject to the payment plan as accepted there under in the application form.
- b) That it is contended to note that the respondent being in a position of developer did not make any false promises or had not given fake assurances to the complainant. That all the terms and conditions were made crystal clear to the complainant at the time of booking and the application form therein and also at the time of execution of agreement to sell/Builder Buyers Agreement. That the complainant proceeded with the agreement to sell/builder buyer's agreement will-fully agreeing to the same without any objections whatsoever.
- c) That the project was delayed due to the reasons that the Hon'ble National Green Tribunal (NGT) had passed orders governing the entry and exit of vehicles in NCR region and the Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for the last couple of years at the time of change in weather in November every year. The delay in completion of project is mainly on account of orders of the National Green Tribunal (NGT) for banning construction activities at project site. The said orders were passed by the NGT from time to time due to unforeseen rise in pollution and high risk in air quality

index. It is pertinent to note that re-mobilization of resources and commencing works in full swing after lifting of the ban is a slow process and therefore the overall impact of the ban was much extensive as compared to the actual ban. The Contractor of respondent could not undertake construction for approximately 2-3 months every year, in compliance of the orders of Hon'ble National Green Tribunal. There were frequent disturbances and disruptions in completion of construction activity at the spot causing delays which were unforeseen and absolutely beyond the power and control of the respondent. The details of the ban on construction and the number of days affected due to the same are enumerated herein below: -

Sr. No.	Year	Start Date	End Date	No. of Days	Remarks
1	2018	01/11/2018	10/11/2018	9	Complete Ban
2	2019	01/11/2019	09/12/2019	38	Complete Ban
3	2019	09/12/2019	14/02/2020	67	Partial Ban
4	2020	Loss in productivity of manpower output.			90
5	2020	COVID-19-Delay in procurement of Kitchen equipment package, loose furniture.			116

Copies of the aforesaid orders of NGT are enclosed along with this form.

Validity of Registration Certificate = 30.12.2020

Impact of NGT Ban & Covid-19 from date of registration until February 2020 = 320 days.

- d) Further the impact of lockdown to curb the spread of Novel Corona Virus (Covid 19) leading to a complete halt in all activities except essential services has led to substantial delays in re-mobilization of manpower followed by adherence of MHA guidelines that has led to loss of productivity in manpower outputs to complete the works at site. Though we have ensured fast tracking the activities by targeting the completion of parallel work front and procurement of sourced items at site, few critical path activities have been delayed on the account of compliance of MHA guidelines to control the spread of Covid-19 in 2020

followed by Omicron in the year 2021 and the same is unforeseen delay beyond the control of the developer. Due to spread of Covid-19 and Omicron the Hon'ble Apex Court have extended all Kinds of Limitations from 15.03.2020 till 28.02.2022.

- e) The developer/builder committed to handover timely possession and hence with facing the aforesaid difficulties the construction of the project has been completed in February 2023, the aforesaid fact of completion of work can be verified with the spot inspection. Promptly after completion of project, the developer/respondent had applied for the grant of occupation certificate but the same application has been returned in original by the DGTCP, by stating the reason that the company shall apply for change in name of company under the beneficial policy dated 18.02.2015 or after the decision of Hon'ble High Court in CWP No. 9586 of 2021 titled as Burman Estate Pvt. Ltd. Vs. State of Haryana. The respondent/developer was and still committed to give possession of the allotted unit within prescribed time but the unforeseen delay has been caused due to reasons stated above, which are beyond the power and control of the respondent/developer. The Occupation Certificate has been duly issued by the department of Town and Country Planning, Chandigarh, Haryana vide Memo No. ZP-464-Vol.-II/PA(DK)/2024/34907 dated 19.11.2024.
- f) That the respondent/developer have already spent enormous amount of money towards the due construction and development of the project of which occupation certificate was already applied but had been returned due to reason stated above. The respondent has filed their reply against show cause notice dated 02.04.2021 to The Director, town and Country Planning, Department Haryana in pursuant to order dated 10.10.2023 passed by the Hon'ble Punjab and Haryana High Court, Chandigarh on which hearing has been conducted on dated 02.02.2024 and the order of DGTCP was awaited. Now the aforesaid

matter has been decided and settled, all formalities has been completed and the occupation certificate has been duly issued by the department of Town and Country Planning, Chandigarh, Haryana vide Memo No. ZP-464-Vol.-II/PA(DK)/2024/34907 dated 19.11.2024 rather the complainant did not come forward to take possession of the unit allotted to him.

- g) That the respondent/developers spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) and have duly performed their obligations have been unable to realize the proceeds of the said project from the complainant and the legitimate dues of the respondent/developers for no just and valid cause have been withheld by the allottees. The complainant has violated several provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017 and are liable for the same. On account of such breaches, delays and defaults of the respondents it is the respondent/developers who are entitled to claim compensation from the allottees including complainant. That as per Section 38 of the RERA Act, 2016, this Hon'ble Authority has the power to impose penalty or interest in regard to any contravention of obligations casted upon the complainant under the RERA Act, 2016 or the Haryana RERA Rules, 2017 and the regulations.
- h) That the complainant intentionally concealed material facts and filed present complaint with the sole purpose of avoiding the agreed terms of the agreement and to gain unlawful enrichment. That it is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of the intention of the complainant. The present complaint is devoid of merit and thus liable to be dismissed. That the complainant has alleged some baseless allegations without stating as to how they are being aggrieved by the respondent. The complainant be put to the strict proof of the same. It is humbly submitted that the complainant has not come

this court with clean hands and has withheld crucial information and the said complaint is liable to be dismissed on this ground alone.

- i) That the complainant is trying to shift his onus of failure on the respondent as it is the complainant who failed to comply his part of obligation and miserably failed to pay the instalments in time, which clearly shows the gross misconduct and malafide motive of the complainant who has pre-determined mala-fide motive to cause harassment and financial loss to the respondent by raising baseless and absurd allegations which are not maintainable in the eyes of law.
 - j) That, it is evident that the entire case of the complainant is nothing but a web of lies and false and frivolous allegations made against the respondent and the same is an afterthought and a concocted story. That the various contentions and claims as raised by the complainant is fictitious, baseless, vague, and wrong and created to misrepresent and mislead this Authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant is sustainable before the Authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
7. All other averments made in the complaint were denied in toto.
 8. 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:**
9. 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

10. 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

11. 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."

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

F. Findings on the objection raised by the respondent:

- F.1 Objection regarding delay due to force majeure circumstances.**

13. The respondent-promoter raised contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic. But all the pleas advanced in this regard are devoid of merit. The Authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 27.06.2021. Further, quoting HARERA notification no. 9/3-2020 dated 26.05.2020, the respondent requested for an extension of 6 months in lieu of Covid-19. However, it is observed by the Authority that a respondent has already obtained a 6 month's extension due to being "unqualified" as per clause 23 of the buyer agreement and is now seeking a second extension based on the COVID-19 pandemic which is unjustified double-benefit. Therefore, any extension in timeframe for handover of possession in lieu of Covid-19 cannot be granted and the due date for handover of possession remains unaltered i.e., 27.06.2021.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to provide the possession of the unit with delayed interest till the date of possession to the complainant;

G.II Pass any other order in the interest of equity and justice.

14. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to Section 18(1) of the Act which reads as under: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

***.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

15. Clause 13.4 of the buyer's agreement (in short, the agreement) provides the time period for handing over possession and the same is reproduced below:

"the developer proposes to offer the possession of the serviced apartment to the allottee within a period of 45 months from the date of execution of this agreement. The allottee further agrees and understands that the developer shall additionally be entitled to a period of 180 days, after the expiry of the said commitment period to allow for unforeseen delays beyond the reasonable control of the developer"

16. **Due date of handing over possession:** As per clause 13.4 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 45 months from the date of this agreement with a grace period 180 days after the expiry of the said commitment period for unforeseen delays beyond the reasonable control of the developer. Accordingly, the due date of possession comes out to be 27.06.2021 including grace period.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee(s) 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, *ibid*. 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]

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.

18. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all cases.
19. 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., 13.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
20. 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;”*
21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.
22. On consideration of the circumstances, the evidence and other records and submissions made by the parties, the Authority is satisfied that the respondent

is in contravention of the provisions of the Act. The due date of handing over possession was 27.06.2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. The occupation certificate has been received by the respondent on 19.11.2024 and the possession of the subject unit was offered to the complainants on 29.11.2024. 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 possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 27.06.2021 till valid offer of possession plus 2 months.

23. Further, as per Section 19(10) of Act of 2016, the allottees are under an obligation 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 19.11.2024. The respondent offered the possession of the unit in question to the complainants only on 29.11.2024. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 27.06.2021 till valid offer of possession after obtaining occupation certificate from the competent authority plus 2 months.

24. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 27.06.2021 till offer of possession (29.11.2024) plus 2 months i.e., 29.01.2025.
25. It is further observed by the Authority, that as per Section 17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favor of the allottees/complainants within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:
- "Section 17. Transfer of title
the promoter shall execute a registered conveyance deed
.....local laws:
Provided that, in 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.*
- [Emphasis supplied]*
26. As occupation certificate of the unit has been obtained by the respondent from the competent authority on 19.11.2024, therefore, there is no reason to withhold the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority hereby directs the respondent to execute the registered conveyance deed in favor of the complainants after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.
- G.III Direct the respondent to pass on the benefit accruing due to the change in tax structure after imposition of GST, to the complainant;**
27. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST

is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 27.06.2021 and the incidence of GST came into operation thereafter on 01.07.2017. The Authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. Accordingly, the promoter shall charge GST from the allottees where the same was leviable, at the applicable rates, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details. Further, if the promoter levies any unjustified amount from the allottees on account of GST or any other taxes, the complainants-allottees are at liberty to seek approach the competent authority for seeking relief in accordance with the applicable Act & Rules.

G.IV Award cost of litigation of Rs.80,000/- in favour of the complainant and against the respondent;


28. The complainant in the aforesaid relief is seeking relief w.r.t litigation cost. The Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of litigation cost and compensation.

H. Directions of the Authority:

29. 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 delayed possession charges at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 27.06.2021 till offer of possession (29.11.2024) plus 2 months i.e., 29.01.2025, as per Proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges within 30 days and the complainants are directed to pay outstanding dues, if any remains, after adjustment of interest for the delayed period.
- III. The rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is further directed to execute the registered conveyance deed in favour of the complainants in terms of Section 17 (1) of the Act of 2016 within 90 days after payment of requisite stamp duty and administrative charges by the complainants.

- V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
30. Complaint as well as application, if any, stand disposed of accordingly.
31. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2026