

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

Complaint no. : 5072 of 2025
Date of order : 19.05.2025

Nidhi Jain

R/o: Flat no.:-D5-904, Parsvnath Exotica,
Golf Course Road, Sector-53, Gurugram,
Haryana-122011.

Complainant

Versus

M/s Anand Divine Developers Private Limited.
Office at: - 711/92, Deepali, Nehru Place,
New Delhi-110019.

Respondent

CORAM:

Shri. Arun Kumar

Chairman

APPEARANCE:

Abhay Jain & Rishabh Jain (Advocates)
Gaurav Rawat (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 provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, 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	"ATS TRIUMPH", Sector 37 C, Gurugram, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	10.144 acres
4.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
5.	HRERA registered/ not registered	40 of 2019 dated 08.07.2019 valid up to 01.12.2019
6.	Date of execution of apartment buyer's agreement [Note: Executed between the complainant, Ruchir Jain (Complainant's husband) and the respondent]	03.12.2012 (As on page no. 35 of complaint)
7.	Unit no.	2091, Floor no.-9 th , Tower no.-2 (As on page no. 38 of complaint)
8.	Super Area	2290 sq. ft. (As on page no. 38 of complaint)
9.	Possession clause	18. <i>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the</i>

		<p><i>Company to Allottee within 36 (Thirty Six) months with grace period of 6 (six) months from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, such date shall hereinafter referred to as 'Stipulated Date', subject always to timely payment of all charges including Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard...</i></p> <p>(As on page no. 48 of the complaint)</p>
10.	Due date of delivery of possession	<p>03.06.2016 [03.12.2015 + 6 months] (Calculated from the date of agreement in absence of date of start of construction and grace period of 6 months is included being unqualified and unconditional) <i>Grace period of 6 months is included</i></p>
11.	Tripartite agreement [Executed between HDFC, complainant]	<p>03.12.2012 (As on page no. 66 of complaint)</p>
12.	Loan Sanction Letter	<p>20.11.2012 (As on page no. 61 of reply) [Note: An amount of Rs.85,00,000/- was sanctioned]</p>
13.	Payment Plan	<p>Construction Linked (As on page no. 62 of complaint)</p>
14.	Sale consideration	<p>Rs.1,74,31,500/- (As on page no. 40 of complaint)</p>
15.	Total amount paid by the complainant	<p>Rs.1,93,28,822/- (As per annexure-4 on page no. 64-65 of complaint)</p>
16.	Occupation Certificate	<p>29.05.2019 [Note: As per the data available on the TCP Haryana]</p>
17.	Offer of possession	<p>30.05.2019 (As on page no. 72 of complaint)</p>

18.	Reminders sent by respondent to clear the outstanding dues and take possession	03.07.2019 02.08.2019 12.09.2019 18.10.2019 08.01.2020
19.	Supplementary Agreement transferring the allotment solely in favour of the complainant	19.05.2022 (As on page no. 70 of complaint)
20.	Conveyance Deed in favor of complainant	22.08.2024 (As on page no. 81 of complaint)
21.	Possession Certificate	29.07.2024 (As on page no. 87 of reply)
22.	Key Handover letter	29.07.2024 (As on page no. 89 of reply)

B. Facts of the complaint

3. The complainant has made the following submission: -
 - I. That the respondent collected a huge amount from gullible and naïve buyers including the complainant from 2012 onwards and kept on promising the complainant for the delivery of possession of her Flat on time as per the Agreement. The complainant paid all payable amounts, as and when demanded by the respondent, a total of Rs.1,93,28,822/- till July, 2020. But the respondent had failed to complete the development works at the project site on time and offer legitimate and lawful possession of the Flat.
 - II. Initially, the complainant along with her husband booked the residential Flat with the respondent vide Application Form dated 05.10.2012 and paid Rs.10,00,000/- as booking amount to the respondent. The complainant opted for a "construction linked payment plan" for making payments for the Flat.
 - III. The Buyer's Agreement was executed between the complainant along with her husband and the respondent on 03.12.2012 for the said Flat for a total

- consideration of Rs.1,83,90,250/-. Vide Supplementary Agreement dated 19.05.2022, the complainant became the sole owner of the subject flat, as the share of her husband was transferred to her.
- IV. As per clause 18, of the Agreement, the respondent promised to handover possession of the Flat within a period of thirty six (36) months with a grace period of 6 (six) months from the actual start of the construction of tower in which the Flat of the complainant is located and offer possession to the complainant. As per the construction link payment plan of the Agreement, the commencement of piling is to be considered as the date of start of construction and the respondent has raised demand towards the aforesaid on 08.06.2013. Therefore, the due date after including the grace period (6 months) comes out to be 08.12.2016.
- V. That the respondent did not complete the work in the Flat until 22.08.2024, when the conveyance was executed and the possession was handed over to the complainant. The respondent after the receipt of the Occupation Certificate in May, 2019 had made an offer for possession vide letter dated 30.05.2019, but as per the terms of the Agreement the respondent was bound to provide semi-furnished Flat, which to the utter shock of the complainant was not complete and habitable in May, 2019.
- VI. It is also pertinent to state that due to the failure of the respondent in completing the finishing works and upon request of the respondent, the complainant did the finishing works at their own costs which was adjusted subsequently between the parties. Moreover, even after repetitive requests by the complainant, the respondent did not conceded any amount towards delayed possession interest due to immense delay caused in the delivery of the Flat.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay interest for every month of delay in offering the possession of the Flat since 08.12.2016 to the complainant, on the amount taken from the complainant towards sale consideration for the aforesaid Flat, with interest at the prescribed rate as per the Act, 2016, till the respondent handed over possession on 22.08.2024.
 - ii. Direct the respondent to refund with interest the amount collected Goods and Services Tax (GST) from the complainant, as the due date of possession was 08.12.2016, *i.e.*, before the implementation of the GST.
 - iii. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant along with other 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) (a) 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. That while the **law of limitation** may not apply to proceedings under the RERA Act in strict terms, this Hon'ble Authority, in Complaint No. 1885 of 2024 titled "*Kamal Singhal vs. M/s Emaar MGF Land Limited*", has arrived at a reasonable period of three years within which a litigant ought to assert his rights. The present complaint, having been filed beyond this reasonable period from the date of offer of possession of the unit in question dated 30.05.2019, is therefore liable to be dismissed on grounds of delay and laches.
 - II. That the complainant was allotted the unit vide Booking Form dated 05.10.2012 and Apartment Buyer Agreement dated 03.12.2012. Possession

was offered vide letter dated 30.05.2019. She refused physical possession citing alleged incomplete finishes despite the unit being ready and habitable on "as is where is/bare shell" basis as per agreement terms and subsequent key handover. The complainant contradictorily accepted possession vide Key Handover Letter, Possession Certificate, and full & final Settlement Letter dated around 29.07.2024, wherein she explicitly waived all claims for delay compensation, interest, or penalties, thereby acknowledging valid tender of possession while wilfully obstructing closure through delayed acceptance and self-induced adjustments in letter dated 27.04.2023 filed by the complainant.

- III. As aforesaid, the Apartment Buyer Agreement made in favour of the complainant vide Booking Form dated 05.10.2012, Buyer's Agreement dated 03.12.2012, and Tripartite Agreement between the Complainant, Respondent, and HDFC Ltd. all dated 03.12.2012 remains valid and subsisting. Possession was offered vide letter dated 30.05.2019. The complainant never raised timely objections to the offer but instead accepted physical possession vide Key Handover Letter, Possession Certificate, and Indemnity Undertaking around 03.08.2024, followed by execution of Conveyance Deed on 29.07.2024 and a letter dated 14.01.2025 from the HDFC bank to collect the original title deed. It is submitted with due respect that the present complaint is grossly time-barred as the respondent offered possession vide letter dated 30.05.2019, over 6 years ago, and the complainant voluntarily took possession without reservation, extinguishing any cause of action under Section 18 RERA; further, her explicit Settlement Letter waiving all claims bars the complaint on grounds of limitation, acquiescence, waiver, and estoppel alone, rendering it liable to outright dismissal.

- IV. That the reliefs claimed by the complainant are ex facie not maintainable under Section 18 of the RERA Act. The complainant seeks delay possession charges, GST refund, and legal costs despite voluntarily accepting physical possession on "as is where is/bare shell" basis vide her signed Key Handover Letter, Possession Certificate both dated 29.07.2024, and full & final Settlement Letter, documents wherein she explicitly confirmed satisfaction with construction/specifications, undertook no future claims/litigation on any head (past/present/future), and affirmed all dues/grievances settled forever, superseding prior emails/letters. These reliefs, apart from being factually defeated by her own letter dated 27.04.2023 to respondent requesting adjustment of Rs.8,75,289, undertaking self-execution under supervision without claims, and direct vendor payments.
- V. That the Apartment Buyer Agreement executed in the present case did not provide any definite date or time frame for handing over of possession of the flat to the complainant; therefore, any claim for compensation or interest cannot be sustained under the RERA Act. Clause 18 of the ABA stipulates possession within 36 months plus 6 months grace from actual start of construction, subject to "force majeure" events including government approvals, litigation, and external delays expressly saving timelines. The respondent issued valid Offer of Possession dated 30.05.2019 post Occupation Certificate, well within extended timelines accounting for force majeure such as regulatory delays, RERA registration issues, and COVID-19 disruptions (2020-2022), after which the complainant delayed acceptance for 5+ years citing self-handled finishes before voluntary closure via possession documents and Conveyance Deed 22.08.2024.
- VI. That the reliefs sought by the complainant are in direct conflict with the terms and conditions of the Buyer's Agreement dated 03.12.2012 and on this ground alone, the complaint deserves to be dismissed. The complainant

cannot be allowed to seek any relief which contradicts the ABA, including Clause 18, Clause 19, and Schedule IV which mention finishes, which complainant self-completed through a letter dated 27.04.2023 .

- VII. That the delivery of possession by a specified date was not the essence of the ABA and the complainant was fully aware that completion beyond the tentative timeline in Clause 18 was possible due to force majeure events. The ABA contains provisions for limited compensation under Clause 19 in event of delay, expressly excepting force majeure occurrences which extended timelines validly till offer of possession in 2019. Without prejudice, the alleged delay on part of respondent in delivery of possession, even if assumed, cannot entitle the complainant to ignore agreed terms like her self-completion and "as is where is" acceptance and seek escalated RERA interest after herself defaulting on taking possession for 5+ years post offer of possession dated 30.05.2019, culminating in voluntary settlement and Conveyance Deed.
- VIII. That despite receipt of Offer of Possession dated 30.05.2019 and complainant's own 27.04.2023 letter undertaking self-completion of finishes , the complainant in entire complaint has neither disputed the legal validity of the 2019 possession offer nor explained her contradictory 5+ year delay/refusal followed by voluntary acceptance via Key Handover/Possession/Settlement Letters 29.07.2024 waiving all claims and Conveyance Deed 22.08.2024.
- IX. That the project construction is already completed and the competent Authority has already granted Occupancy Certificate(s) for the project. The complainant kept slumbering over his rights till date of filling of complaint as they themselves breached the terms and conditions of the booking/ allotment since inception. The complainant, despite receipt of possession offer dated 30.05.2019 and agreeing to Buyer's Agreement terms

dated 03.12.2012 wherein time is essence of her obligations to take possession post-offer, in complete breach of material terms, failed/refused physical possession for 5+ years despite unit readiness, reminders and her 27.04.2023 self-completion undertaking ; instead, complainant filed this frivolous complaint falsely claiming non-possession despite voluntary closure via Key Handover/Possession/Settlement Letters 29.07.2024, Conveyance Deed 22.08.2024), and HDFC title release 14.01.2025.

7. 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

8. 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

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 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;

11. 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.

F. Findings on the objections raised by the respondent.

F.I Objection regarding the complaint being barred by limitation.

12. The Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
13. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

14. In the present matter the cause of action arose on 30.05.2019 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 26.09.2025. However, an email dated 22.06.2022 is on record wherein the complainant has requested the respondent to update the status of handing over of her flat and requested to move in as soon as possible. The respondent replied that they are following up with the concerned department for the readiness of the unit and they are working on the same. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.
- **Whether the complainants can claim delayed possession charges after execution of the conveyance deed?**
15. The respondent stated that the Conveyance Deed of the unit has already been executed in favour of the complainant on 22.08.2024 and the transaction between the parties stands concluded upon the execution of Conveyance Deed.
16. The respondent has argued that upon the execution of the Conveyance Deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
17. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a

sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

18. That the execution of a Conveyance Deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the Conveyance Deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the Conveyance Deed.
19. The allottee has invested her hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the Conveyance Deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a Conveyance Deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On

the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

20. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainants never gave up their statutory right to seek delayed possession charges as per the provisions of the said Act.
21. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainant retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

G. Findings on the relief sought by the complainant:

- G.I. Direct the respondent to pay interest for every month of delay in offering the possession of the Flat since 08.12.2016 to the complainant, on the amount taken from the complainant towards sale consideration for the aforesaid Flat, with interest at the prescribed rate as per the Act, 2016, till the respondent handed over possession on 22.08.2024.
22. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit and delayed possession

charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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."*

(Emphasis supplied)

23. As per Clause 18 of the Apartment Buyer's Agreement (in short, the agreement) dated 03.12.2012, the promoter has proposed to hand over the possession of the said unit on or before 03.06.2016. Therefore, the due date of possession comes out to be 03.06.2016.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and 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.

25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. 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., 19.05.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
27. 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;"*
28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Authority has observed that the Buyer's Agreement was executed on 03.012.2012 between the complainant, Mr. Ruchir Jain (complainant's husband) and the respondent in respect of the subject unit i.e., unit no.2091 situated on 9th floor in Tower no.-2 admeasuring 2290 sq.ft. of Super Area in the project namely "ATS Triumph" situated in Scetor-37 C, Gurugram, Haryana. As per clause 18 of the Apartment buyer's Agreement dated 03.12.2012, the respondent undertook to offer possession of the unit within a period of 36 months from the date of

actual start of construction of the particular tower/building in which the registration for allotment is made, along with a grace period of 6 months. The possession of the subject unit was to be offered by 03.06.2016. The Occupation Certificate in respect of the subject unit was granted to the respondent by the competent authorities on 29.05.2019 and thereafter, the respondent offered possession of the unit to the complainant on 30.05.2019. A Supplementary Agreement transferring the allotment solely in the favour of the complainant was executed on 19.05.2022 and the same has been placed on record, whereby the allotment now stands in favour of the complainant solely. The respondent has failed to handover possession of the subject unit on the due date and also thereafter till 29.07.2024. The respondent has failed to handover possession of the unit despite receiving Occupation Certificate and receiving all the timely payments. The unit was handed over to the complainants only on 29.07.2024 i.e., after a delay of more than 6 years from the date the offer for possession was made to the complainant. The complainant has been chasing the respondent from time and again, seeking possession of the unit. The Authority would like to emphasize on an email dated 22.06.2022 whereby the respondent has itself admitted that the unit is not complete. The content of the said email same is reiterated below:

" Dear Sir,

With reference to your mail below, this is to inform you that we are in follow ups internally with the concerned department for the readiness of your unit. They are working on the same.

As soon as we receives the handover timelines we will update you.

[Emphasis supplied]

29. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of

the Buyer's Agreement dated 03.12.2012 executed between the parties. Further, the Authority observes that the respondent obtained the occupation certificate on 29.05.2019, offered possession to the complainant on 30.05.2019, possession was handed over to the complainant on 29.07.2024 and the Conveyance Deed was executed on 22.08.2024.

30. 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 complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.80% p.a. w.e.f. 03.06.2016 till the date of actual handing over of possession i.e., 29.07.2024 as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondent to refund with interest the amount collected Goods and Services Tax (GST) from the complainant, as the due date of possession was 08.12.2016, i.e., before the implementation of the GST.

31. The financial liabilities between the allottee and the promoter comes to an end after the execution of the Conveyance Deed. The complainant could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

G.III. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant along with other charges.

32. 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. Vs. 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority: -

33. 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 promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 10.80% for every month of delay on the amount paid by the complainant from the due date of possession i.e., 03.06.2016 till the actual handing over of possession i.e., 29.07.2024 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
34. Complaint stands disposed of.
35. File be consigned to the registry

Dated: 19.05.2026



(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram