BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4503 of 2024**
Date of filing :		**24.09.2024**
Date of Decision :		**22.05.2026**

1. **Vishwanath Nair**
2. **Simran Nair**

Both R/o: 6054-6, D6, Santushti Apartments, Vasant Kunj, New Delhi-110070 — **Complainants**

Versus

1. **M/s Newlook Builders and Developers Pvt. Ltd. (Formerly Known as Ansal Phalak Infrastructure Pvt. Ltd.)**

Address:- 1st Floor, The Great Eastern Centre, 70, Nehru Place, Behind IFCI Tower, New Delhi - 110019

2. **Ansal Properties and Infrastructure Pvt. Ltd.**

Address: - 115, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi - 110001 — **Respondents**

CORAM:

Shri Arun Kumar — **Chairman**

APPEARANCE:

Sh. Parmanand Yadav (Advocate)	Complainants
Sh. Abhinav Kaushik (Advocate)	Respondent no. 1
None	Respondent no. 2

ORDER

1. The present complaint dated 24.09.2024 has been filed by the complainants/allottee in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Versalia", Sector-67-A, Gurugram.
2.	Project area	38.262 Acres
3.	Nature of Project	Residential colony
4.	DTCP license no. and validity status	81 of 2013 dated 19.09.2013
5.	Rera registered/ not registered and validity status	**Registered** Vide no.154 of 2017 dated 28.08.2017 Valid upto 31.08.2020
6.	Unit no.	FF3236 (pg. 42 of complaint)
7.	Unit area	1685 sq. ft. (pg. 42 of complaint)
8.	Allotment letter	25.09.2015 (page no. 38 of complaint)
9.	Date of Flat Buyer's agreement	26.09.2015 (as per page 41 of complaint)
10.	Tripartite agreement	30.09.2015 (pg. 61 of complaint)
11.	Possession clause	**5 Possession of Floor** 5.1 Subject to clause 5.2 infra and further subject to all the buyers of the floors in

		the residential colony making timely payment, the company shall endeavor the complete the development of residential colony and the floor as far as possible within 36 months with an extended period of 6 months from the date of execution of this floor buyer agreement, subject to the receipt of requisite building/revised building plans... **[Emphasis supplied]** (as per page 47 of complaint)
12.	Due date of possession	**26.03.2019** (Note: the due date of possession is calculated 36 months + 6 months from the date of execution of buyer's agreement is allowed, being unconditional)
13.	Total sale consideration	**Rs.1,30,00,000/-** (as per agreement at pg. 44 of complaint)
14.	Amount paid	Rs. 40,85,426/- (as per customer ledger at pg. 12 of reply)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

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

I. That believing the assurances of officials of the respondent no. 1 and interest of the complainants, the complainants booked unit bearing no. 3236, first floor admeasuring 1685 sq. ft., in the said project vide booking application form dated 20.09.2015 and paid booking amount of

Rs. 6,00,000/- and Rs. 3,57,265/- vide RTGS no. 838481339 dated 25.09.2015, towards the provisional booking amount.

II. That the complainants at the time of their booking had opted for a subvention payment plan and accordingly the complainants had applied for a housing loan amounting of Rs. 1,35,05,500/- with Dewan Housing Finance Corporation Limited (DHFL) this financial institution was later acquired by Piramal Capital & Housing Finance. DHFL vide letter cum acceptance dated 23.09.2015 had sanctioned a loan of Rs. 1,05,00, 000/-

III. That the respondent no. 1 issued an allotment letter dated 25.09.2015 for the residential floor in the name of the complainants.

IV. That the respondent no. 1 had executed an agreement for sale/builder buyer agreement dated 26.09.2015 with the complainants for the residential plotted unit bearing no. FF-3236, in Avante/Versalia, admeasuring 1685 sq. ft. on first floor sector 67A Gurugram for a total sale consideration of Rs 1,30,00,000/- along with other charges to be paid proportionately as and when demand raised by the respondent no. 1. According to clause 5.1 of the flat/builder buyer agreement, the time of handing over possession was on or before 26.03.2019 including a grace period of 6 months. The respondent no. 1 had assured and promised to hand over possession of the unit maximum by 26.03.2019.

V. That as per the subvention payment plan the complainants, respondent no. 1 and DHFL entered into a tripartite agreement dated 30.09.2015 whereby the respondent no. 1 had agreed and undertook to pay Pre-EMI interest from 14.09.2017 till 22.10.2022 on the entire amount of loan disbursed by DHFL to the complainants. The respondent no. 1 only paid Pre-EMI interest of 56 months. Between April 2022 till September 2022 the respondent no. 1 took a moratorium and interest of Rs.

1,51,552/- was capitalized for non-payments of Pre-EMI Interest.

VI. That the respondent no. 1 never started construction for the timely completion of the project and kept on sitting on the hard-earned money of the complainants. On 23.04.2018 the respondent no. 1 through email updated the complainants of receiving all the documents necessary for commencing the construction at the site any time soon. The respondent no. 1 since then has not even started the construction of the allotted unit in the said project.

VII. That the complainants vide email dated 22.06.2018, informed the respondent no. 1 that there have been 3-4 cheque bounces and 5-6 delayed payments and their obligation to pay Pre-EMI interest on the loan disbursed by DHFL. The complainants also requested the respondent no. 1 to clear the payments for the months of May & June 2018. On the same day, the respondent no. 1 reverted to the aforesaid email of the complainants and informed their meeting with the DHFL team regarding payments and outstanding payments to be initiated within two working days. The respondent no. 1 delayed in releasing the Pre-EMI interest as agreed upon by the respondent no. 1 after various emails made by the complainants.

VIII. That the complainants vide their email dated 12.12.2018, informed the respondent no. 1 that the payments of Pre-EMI interest for the months of November and December 2018 were bounced and an outstanding amount of Rs. 71,153/- including the aforesaid months was due for payments and thereby requested the respondent no. 1 to clear the payments with immediate effect. The delayed payments and cheque bouncing of the payments to be made by the respondent no. 1 as per the tripartite agreement adversely affected the credit score (CIBIL) of the complainants.

IX. That the complainants vide their email dated 14.12.2018, requested the respondent no. 1 to revert to his emails for the payments that were to be made by the respondent no. 1 to DHFL.

X. That on 26.03.2019, the respondent no. 1 failed to hand over the physical possession of the unit as per clause no 5.1 of the flat/builder buyer agreement despite the receipt of a substantial amount of the total sale price from the complainants. The respondent no. 1 failed to keep its assurances and promises made to the complainants.

XI. That on 27.09.2020, the complainants informed the respondent no. 1 that the Pre-EMI for the month of September 2020 of Rs. 25,943/- was not paid by the respondent no. 1. Also informed the respondent no. 1 that with other customers of the same project "EMI till possession" payments have been made by the respondent no. 1. It was also informed that the complainants assured DHFL that the respondent no. 1 will keep up their commitment and continue to pay Pre-EMI interest for the allotted unit till possession.

XII. That the complainants vide email dated 26.07.2021 to the respondent no. 1 thereby informed non-payment of Pre-EMI interest to DHFL by the respondent no. 1, due to which the credit history of the complainants has been immensely affected. The complainants made few payments in the last 4 months to ensure his credit history is not impacted. The complainants also informed the respondent no. 1 that these payments were committed to be paid by the respondent no. 1 to DHFL till possession. Therefore, the complainants further requested the respondent no. 1 to make regular and timely payments to DHFL. The complainants paid Rs. 1,41,479/- on behalf of the respondent no. 1 to

DHFL.

XIII. That DHFL vide email dated 29.07.2021 to the complainants thereby requested to pay the overdue loan and confirm the status of the current month's payment. The complainants further sent an email to the respondent no. 1 to follow up with the current month's payment.

XIV. That the complainants vide email dated 09.08.2021 informed the respondent no. 1 of (2) two months payment due of Rs. 57, 768/- on the part of the respondent no. 1 which severely impacted the CIBIL score of the complainants. The complainants also requested the respondent no. 1 to transfer his dues of Rs. 1,41,479/- as the complainants needed the funds for his family emergency.

XV. That the respondent no. 1 has paid subvention Pre-EMIs from 14.09.2017 till 22.10.2022 i.e. only 56 Pre-EMI interest amount to Rs. 1,61, 504/- out of total tenure (monthly) 386 Pre-EMI interest and rest Pre-EMI's interest have been paid by the complainants till date. Thereafter, from April 2020 till September 2020, the respondent no. 1 had taken 6 (six) months moratorium. However, the respondent no. 1 should have paid Pre-EMI interest till possession as has been paid by the respondent no. 1 to its other customers of the same project. Vide statement of account for the period between 30.06.2022 till 20.08.2024, of Piramal Capital & Housing Finance (formerly known as DHFL)an amount of Rs. 25, 88, 269/- was received from Piramal Capital & Housing Finance (formerly known as DHFL) whereby an amount of Rs. 26, 14, 353/- is the principal outstanding amount and Rs. 1, 51, 552/- is the capitalized amount for the 6 months moratorium taken by the respondent no. 1.

XVI. That the respondent no. 1 changed its name from Ansal Phalak

Infrastructure Private Limited to New Look Builders and Developers Private Limited.

XVII. That the complainants were frustrated and pushed to the corner and having waited for almost 9 years without prejudice to their rights vide email dated 14.06.2024 requested for refund and interest from the scrapped project Ansal Versalia, Sector 67-A, Gurgaon from the respondent no. 1 company. The respondent no. 1 company without any intimation to the complainants scrapped the project despite diligently paying off the EMI's for the housing loan associated with the allotted unit.

XVIII. The complainants waited patiently for nine years but unfortunately no progress on the said project was ever been made by the respondent no. 1 company. Despite significant investment and the financial burden on the complainants, the project never moved forward. The complainants after being left with no other option thereby requested the respondent no. 1 for a refund of a total contribution made by them alongwith applicable interest. That the respondent no. 1 vide an email dated 11.07.2024 replied to the aforesaid email of the complainants and confirmed of receiving the payment of Rs. 40, 86, 524/- made by the complainants. Further, the respondent no. 1 stated that New Look Builders and Developers Private Limited was an associate of Ansal Properties and Infrastructure Pvt. Ltd. (APIL) at the time of allotment of the unit to the complainants.

XIX. That the complainants visited the site of their allotted unit and found no construction had even started and is a vacant plot, however, the respondent no. 1 was constructing the units on other nearby plots adjacent to the allotted unit of the complainants. The complainants again visited the respondent no. 1 office and requested for the construction and possession of their allotted unit.

XX. That New Look Builders and Developers Private Limited has all the roles and responsibilities in completing the said project timely after stepping into the shoes of Ansal Phalak Infrastructure Private Limited as is evident from the aforesaid facts.

C. Reliefs sought by the complainants

4. The complainants are seeking the following relief:

   i. Directing the respondent no. 1 to deliver the possession of the allotted unit FF-3236, Avante/Versalia, Sector 67-A, admeasuring 1625 sq. ft. as per terms of BBA.

   ii. Directing the respondent no. 1 to pay delay possession charges @ 10.75% per annum compensation from 26.03.2019 (including grace period of 6 months)i.e. the date of delivery of possession until the date of actual delivery of possession.

   iii. Directing the respondent to pay the Pre-EMI interest paid by the complainants of Rs. 6,64,332/- @ 11.42% (bank rate of interest) plus amortization amount of Rs. 1,51,552/- totaling Rs. 8,15,884/- alongwith pending Pre EMI's to be paid by the complainants.

   iv. Directing the respondent no. 1 to provide a copy of the occupation certificate.

   v. Directing the respondent no. 1 to execute the conveyance deed as per section 17 of the RERA Act.

   vi. Legal costs of Rs. 1 Lakhs be also awarded to the complainants.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention 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 filed by the respondent no. 1.

6. The respondent no. 1 has contended the complaint on the following grounds:

I. That the complainants were allotted with the unit by execution of floor buyer agreement dated 26.09.2016 for basic sale consideration of Rs. 1,30,00,000/-.

II. As a matter of record, the complainants have paid a total of Rs. 40,47,524/- to the respondent no. 1. Thereafter, the complainants have not paid any amount to the respondent no. 1.

III. As a matter of fact the respondent no. 1 was incorporated under the provisions of Companies Act, 1956 in year 2010 by two promoter entities namely Ansal Properties and Infrastructure Ltd. ("Promoter No. 1/ APIL") and Caliber Properties Pvt. Ltd. (hereinafter collectively referred to as "Promoters") with the sole purpose for development, construction and execution of a township on a minimum of 141 acres of developable and licensable land being a part of the property located at Sector 67 and Sector 67 A, Gurugram.

IV. Subsequent, to the incorporation of the respondent no. 1, the promoters invited bookings from the general public for allotment of units in the said project. Accordingly, the complainants approached the respondent no. 1 company controlled by management of APIL and booked a unit bearing no. FF 3255 (Unit) in the project titled as "Versalia", situated in Sector 67A, Gurugram.

V. Simultaneously, the promoters also took investment from several investors for the purpose of development, construction and execution of a township on a minimum of 141 acres of developable and licensable land being a part of the project. As a matter of fact, the promoter on behalf of the respondent no. 1 had undertaken to repay the said investments as per the terms set out in respective investment agreements executed with the investors. However, the promoters failed to fulfil their obligations in terms of the said investment agreements.

VI. As a matter of fact, the promoters being in control of the respondent no. 1 had mis-appropriated the assets of the respondent no. 1 for their personal gain at the cost of investors including but not limited to allottee(s) who had invested in the projects of the respondent no. 1 from 2011 to 2019 to construct their respective units/flats/apartment/plots after taking approvals from the respective government and statutory authorities.

VII. In order to claim their lawful right under the investment agreements, the investors initiated arbitration proceedings against the promoters and the respondent no. 1. The arbitration proceedings were conducted before Retd. Justice K.S. Gupta, Sole Arbitrator.

VIII. During the pendency of said arbitration proceedings, the parties to the arbitration proceedings i.e. the promoters of respondent no. 1 investors and respondent no. 1 company reached a settlement and recorded the terms of settlement in master settlement agreement dated 24.12.2019 (hereinafter referred to as "MSA").

IX. At the foremost, in order to protect the rights of the investors of the respondent no. 1, including the rights of allottee's of different project (as mentioned above), it was agreed between the parties that the management of the respondent no. 1 would be changed and as such the promoters would not be in any manner managing the respondent no. 1

and the investors would be managing the respondent no. 1.

X. It was further agreed that promoters shall keep the respondent no. 1 company fully indemnified against any and all liabilities, claims, obligations, losses, damages, penalties, actions, judgements, suits, claims against the company.

XI. Since, under the management of promoter no. 1, the respondent no. 1 had defaulted in its responsibilities towards the allottee's, and also under of the MSA, the promoter no. 1 undertook to complete the constructions of the respective projects and settle any claim of the allottees or pay the decretal amount towards the award passed by any court/ tribunal.

XII. The promoters further undertook to indemnify the respondent no. 1 under clause 3.1 of the MSA against any liabilities arising out of action/ decisions taken before the nominee of the investors are appointed on the board of the respondent no. 1. The promoters had also undertaken to indemnify the respondent no. 1 against any in relation to the first project land (as defined in msa) including but not related to claims of the allottees/customers.

XIII. Pertinently in terms of clause 1.2 and 4.5 of the MSA, the promoter no. 1 had undertaken to settle all litigation matters in relation to the customers of the project lands, wherein the company or the first promoter are parties, pending at NCLT, NCDRC or any other court/forum.

XIV. The aforesaid facts were duly acknowledged and recorded by this Hon'ble Authority in the Registration Order dated 30.05.2022 and Arbitration Award dated 19.05.2023 passed by Retd. Justice K.S. Gupta, Sole Arbitrator. Admittedly, it is APIL who is responsible for development and construction of the unit and the project where the unit in the captioned complaint is situated is evident from the para 41, 42 and 43 of the order dated 30.05.2022 passed by this Hon'ble Authority. However till date, APIL has neither completed the project nor has cleared the liabilities of the allottees in the said project.

XV. In view of aforesaid facts, it is submitted that it is Ansal Properties and Infrastructure Ltd. who was in control of the respondent no. 1 from year 2011 to 2019 and due to its actions/ omissions its investors including the complainants suffered significant losses. Subsequently, through Master Settlement Agreement dated 24.12.2019, the promoter no. 1 had agreed to construct the project and to settle all the claims of its investors including the complainants and indemnify the respondent no. 1 company in case of any loss caused due to claim of any other person such as complainants.

XVI. In light of the aforesaid facts and submissions made, it is submitted that Ansal Properties and Infrastructure Ltd. is a necessary party for adjudication of the captioned complaint as the same is liable for delay in constructing the project and payment of compensation to the complainants for delay in handing over the unit. Furthermore, the respondent no. 1 is not a necessary party to the captioned complaint as same neither allotted the said unit to the complainants (allotment was done under management of APIL) nor the same is not liable to construct the said Unit or pay any compensation to the complainants. Therefore, the captioned complaint is not maintainable qua the respondent no. 1. Moreover, the prayer sought by the complainants in the captioned complaint is not maintainable before the Hon'ble Authority as the complainants have not impleaded Ansal Properties and Infrastructure

Ltd. a party to the captioned complaint, who is a necessary party to the captioned complaint in the capacity of license holder and registration certificate dated 30.05.2022 of the project. Hence, the captioned complaint is liable to be dismissed in limine for mis-joinder and non-joinder of necessary parties.

XVII. That as per the FBA which is binding between the complainants and the respondent no. 1, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. The liability of the respondent no. 1 on account of delay is specified in clause 5.4 of the flat buyer agreement and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by him.

XVIII. That the flat buyer agreement delineates the respective liabilities of the complainants as well as the respondent no. 1 in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.

XIX. That the complainants have filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the respondent no. 1.

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 those undisputed documents and written submissions made by the parties and who reiterated their earlier version as set up in the pleadings.

E. Jurisdiction of the authority:

8. The authority observed 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)***
> ***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;*

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings of the authority on relief sought by complainants.

i. **Directing the respondent no. 1 to deliver the possession of the allotted unit FF-3236, Avante/Versalia, Sector 67-A, admeasuring 1625 sq. ft. as per terms of BBA.**

ii. **Directing the respondent no. 1 to pay delay possession charges @ 10.75% per annum compensation from 26.03.2019 (including grace period of 6 months) i.e. the date of delivery of possession until the date of actual delivery of possession.**

12. Since both the reliefs are interconnected, they are being dealt together. In the present complaint, the complainants booked a unit in the project "Versalia" being situated at Sector-67 A, Gurugram. The buyer's agreement was executed between the complainants and respondent no. 1 on 26.09.2015 in respect of unit bearing no. FF 3236 admeasuring 1685 sq. ft. The total sale consideration of the unit was Rs. 1,30,00,000/- out of which the complainants have paid an amount of Rs. 40,85,426/-

13. As per clause 5 of the buyer's agreement dated 26.09.2015, the respondent no. 1 undertook to offer possession of the unit to the complainants within 36 months with an extended period of 6 months from the date of execution of the agreement. The agreement was executed between the complainants and the respondent no. 1 on 26.09.2015. Thus, the due date for handing over of possession of the unit to the complainants comes out to be 26.03.2019 including 6 months being unconditional.

14. The respondent no.1 in its reply dated 18.04.2025 has contended that its name should be deleted from the array of parties and that M/s Ansal Properties and Infrastructure Pvt. Ltd. should be impleaded as necessary party to the present case as now the project is being developed by the latter. By order dated 09.01.2026 the authority, impleaded the M/s Ansal Properties and Infrastructure Pvt. Ltd. as respondent no. 2 but did not delete the respondent no. 1 from the proceedings. After impleadment of the M/s Ansal Properties and Infrastructure Pvt. Ltd. it was brought to the

notice of the Authority that the insolvency proceedings has been started against the respondent no. 2 by the National Company Law Tribunal, New Delhi by order dated 25.02.2025 passed on an application under Section 7 of the Insolvency and Bankruptcy Code, 2016. However, due to the moratorium the present matter was adjourned sine dine by the Authority.

15. The complainants thereafter filed an application for restoration of the complaint on 06.04.2026. They pointed out that the National Company Law Appellate Tribunal, New Delhi, by its order dated 07.02.2026 passed in Company Appeal (AT) (Insolvency) Nos. 500 & 502 of 2025, while upholding the admission order dated 25.02.2025, limited the insolvency process against the corporate debtor in the following terms:

> *"(a) The CIRP against the CD is confined to the CD's projects at Lucknow Mother City and Mother City Extension at Lucknow, Golf Plots at Lucknow and the assets of the CD in the State of Rajasthan and built-up properties at Ajmer, Jodhpur and Jaipur in the State of Rajasthan (as detailed in Schedule B of Settlement Agreement dated 03.03.2022 at Serial Nos. 5, 6 and 7).*

16. A plain reading of the above order shows that the insolvency process and the moratorium attached to it has been limited only to the projects at Lucknow and the assets of the corporate debtor in the State of Rajasthan. The present project "Versalia" at Sector 67-A, Gurugram is not covered by those proceedings. The bar that applies during a moratorium, therefore, does not apply to the present matter. Since the complaint had been kept pending only on account of those proceedings it is now restored to its original position and is being decided on merits.

17. Now the question is of liability, whether the Delay Possession Charges are payable by respondent no. 1 or respondent no. 2. The Authority observes

that allotment letter and buyer's agreement was executed between the complainants and Respondent no. 1. By executing the buyer's agreement respondent no. 1 took upon the role and duties of a promoter towards the complainants. The later arrangement between the two respondents under which respondent no. 2 took over the development of the project cannot free respondent no. 1 from the duties it had willingly accepted under the agreement. Nor can such an internal arrangement between the respondents be used against the allottees who are not party to it and whose rights come directly from the agreement signed in their favour.

18. Further the Authority vide order dated 30.05.2022 confined the role of respondent no. 1 to the selling of units in the project while the duty of carrying out the development works of the project was placed on respondent no. 2. It therefore follows that respondent no. 1, having sold the unit and signed the agreement with the complainants and respondent no. 2 having taken up the development and completion of the project. Hence, both are both promoters towards the complainants each in its own role.

19. In the view of the Authority, the duties arising from the buyer's agreement and from the Act of 2016 can be enforced by the complainants against both the respondents together. The respondents cannot shift the blame on each other and thereby deny the allottees their rightful claim to timely possession of the unit for which they have paid their hard-earned money. The Authority therefore holds that respondent no. 1 and respondent no. 2 are jointly and severally liable to the complainants for the duties arising under the buyer's agreement and under the Act of 2016 including the duty to hand over possession and to pay delayed possession charges.

20. The complainants are seeking delayed possession charges along with interest on the amount paid. Clause 5 of the 5 buyer agreement (in short,

agreement) provides for handing over of possession and is reproduced below: -

> *5. Possession of Floor*
>
> *5.1 Subject to Clause 5,2 infra and further subject to all the buyers of the Floors in the Residential Colony making timely payment, the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this Floor buyer agreement subject to the receipt of réquisite building /revised building plans/ other approvals & permissions from the concerned authorities, as well as Force Majeure Conditions as delined in the agreement and subject to fulfilment of the Terms and Conditions of the Allotment, Certificate & Agreement including but not limited to timely payments by the Buyer(s), in terms hereof. The Company shall be entitled to extension of time for completion of construction of the Unit equivalent to the period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over possession of the Unit on account of the aforesaid reasons. However, if the Buyers) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The Buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concemed authorities and competent authorities including but not limited to Environment & Forest.*

21. **Admissibility of 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.*

22. The legislature in its wisdom in the subordinate legislation under 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.

23. 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., **22.05.2026** is 8.80%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.80%.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default;*
> *(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"*

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondents which the same is as is being granted to the complainants in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the buyer agreement executed between the parties on 26.09.2015. As per the clause 5 of the buyer agreement dated 26.09.2015, the respondents undertook to offer possession of the unit to the complainants within 36 months with an extended period of 6 months from the date of execution of the agreement. The agreement was executed between the complainants and the respondent no. 1 on 26.09.2015. Thus, the due date for handing over of possession of the unit to the complainants comes out to be 26.03.2019 including 6 months being unconditional. Till date no occupation certificate has been obtained by the respondents. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period.

27. Accordingly, non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents are established. As such complainants are entitled to delay possession charges at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay on the amount paid by complainants to the respondent from the due date of possession i.e., 26.03.2019 till the valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

28. The respondents are also directed to handover possession of the subject unit allotted to the complainants after completion of the unit in terms of buyer's agreement within a period of 60 days after obtaining valid occupation certificate.

iii. Direct the respondent no. 1 to pay the Pre-EMI interest paid by the complainants of Rs. 6,64,332/- @ 11.42% (bank rate of interest) plus amortization amount of Rs. 1,51,552/- totaling Rs. 8,15,884/- alongwith pending Pre EMI's to be paid by the complainants.

29. The complainants have sought a direction against the respondent no. 1 to pay the Pre-EMI interest amount allegedly paid by them.

30. The Authority observes that a Tripartite Agreement dated 30.09.2015 was executed between the complainants, the respondent no. 1 and the concerned financial institution which is a relevant document for adjudication of the present issue. Clause 5 of the said Agreement provides as under:

> *"The Builder shall make the payment of Pre-EMI interest for the fixed term of .... month(s) as stated above in advance/upfront on behalf of the Borrower to DHFL. The said Pre-EMI amount payable by the Builder shall be paid directly, by way of deduction of appropriate sum by DHFL, as authorized by the Builder, from the loan being disbursed by DHFL. In case disbursement date of loan is other than the 1st day of the month, Pre-EMI for the broken period (i.e., from the disbursement date till the end of the month) shall be paid by the Borrower forthwith."*

31. In view of the aforesaid contractual stipulation, the liability of the parties with respect to payment of Pre-EMI interest shall be governed by the terms of the Tripartite Agreement. Accordingly, the respondents shall discharge/pay such amount of Pre-EMI interest as is payable by it in terms of Clause 5 of the Tripartite Agreement dated 30.09.2015.

iv. Direct the respondent no. 1 to provide a copy of the occupation certificate.

32. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondents promoter are directed to provide the copy of occupation certificate to the complainants.

v. Direct the respondent no. 1 to execute the conveyance deed as per section 17 of the RERA Act.

33. As per Section 11(4)(f) and Section 17(1) of the Act, 2016 the promoter is under obligation to get the conveyance deed executed in favour of the complainants. 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.

34. As OC of the unit has not been obtained, accordingly conveyance deed cannot be executed without the unit come into existence for which conclusive proof of having obtained OC from the competent authority and filing of deed of declaration by the promoter before registering authority.

vi. Legal costs of Rs. 1 Lakhs be also awarded to the complainants.

35. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (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 compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

36. 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 respondents are directed to pay the interest at the prescribed rate i.e. 10.80% per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e., 26.03.2019 till the valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.80% by the respondents, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

iv. The respondents are directed to handover possession of the unit allotted to the complainants after completion of the unit in terms of buyer's agreement after obtaining occupation certificate.

v. The respondents shall not charge anything from the complainants, which is not the part of the buyer's agreement.

37. Complaint stands disposed of.

38. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.05.2026