

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

**Complaint no. : 3158 of 2021**  
**First date of hearing: 10.09.2021**  
**Date of decision : 06.04.2022**

1. Rupa Gupta  
2. Subodh Gupta  
Both RR/o: - Flat No. 608, Block No. 4,  
Express Garden, Vaibhav Khand, Indirapuram,  
Ghaziabad, Uttar Pradesh- 201010

**Complainants**

Versus

M/s Regional Construction Private Limited.  
Corporate office at: 11<sup>th</sup> Floor, Paras Twin Towers,  
Tower-B, Golf Course Road, Sector- 54, Gurugram

**Respondent**

**CORAM:**

Dr. K.K Khandelwal  
Shri Vijay Kumar Goyal

**Chairman**  
**Member**

**APPEARANCE:**

Sh. Harsh Jain  
Sh. Subodh Gupta  
Sh. Akshay Sharma

Advocate for the complainants  
Complainant No. 2 in person  
Advocate for the respondent

**ORDER**

1. The present complaint dated 17.08.2021 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 provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of 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.	Heads	Information
1.	Project name and location	"Ekam" Sector- 05, Gurugram
2.	Project area	15 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	55 of 2019 dated 08.09.2019 valid upto 07.03.2024
5.	Name of licensee	Regional construction private limited
6.	RERA registered/not registered	Registered vide no. 38 of 2019 dated 08.07.2019
7.	RERA registration valid up to	08.03.2025
8.	Unit no.	Plot no. F-12, Tower/block- F, (Page 26 of complaint)
9.	Unit measuring	124 sq. yards. [Super area]
10.	Date of allotment letter	10.10.2019 [page 21 of complaint]
11.	Date of execution of agreement to sell	10.02.2020 (Page 24 of complaint)

12.	Payment plan	Development linked payment plan (Page 57 of complaint)
13.	Total consideration	Rs.19,84,000/- excluding charges and taxes (As per payment plan page 57 of complaint)
14.	Total amount paid by the complainants	Rs.19,84,016/- (As per receipt information page 58 of reply)
15.	Due date of delivery of possession as per clause 8 of agreement to sell subject to the force majeure event, the promoter shall handover possession of the plot and the common areas /services/ facilities which are part of the project on or before as per date mentioned in the RERA certificate. [Page 35 of complaint]	08.03.2025 (Note: - the due date of possession calculated by the date of RERA registration certificate form i.e., 08.03.2025)
16.	Offer of possession	19.04.2021 (Page 59 of complaint)
17.	Completion certificate	Not obtained  [Note: - The respondent has applied CC on 18.12.2020, but there is nothing on record the CC/part CC obtained or not]
18.	Delay in handing over possession till date of this order i.e., 06.04.2022	No delay

**B. Facts of the complaint**

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

- i. That the complainants are joint allottees of the unit in question bearing no. F-12, admeasuring 124 sq. yards, in the project called "Ekam" (hereinafter referred as the "said project") being developed by the respondent as an affordable plotted housing colony under "Deen Dayal Jan Awas Yojna, 2016" situated at sector-5, Village Sohna, Tehsil Sohna, District Gurugram, (Haryana). That on 10.02.2020, the buyer's agreement was executed & duly registered between both the parties.
- ii. That the complainants were shocked after receiving the respondent's letter/notice dated 19.04.2021 with the subject "offer of possession" wherein, inter alia, it unlawfully demanded Rs.8,37,102/- under various components. The respondent, through the said letter also threatened for arbitrary imposition of unlawful charges/penalty/interest etc. in case of non-compliance to its illegal demands within 30 days from the date of the said letter.
- iii. That the complainants telephonically raised the issue of arbitrary & unlawful demands with the respondent's authorized representative, but to no avail. Further, the complainants wrote a mail to the respondent and demanded the necessary documents /approvals from the competent authorities and sought the lawful

justification/calculation of per square yard price qua EDC/IDC and other unlawful demands. The respondent's reply was completely vague, highly evasive, without any lawful basis and without any supporting documents.

- iv. That on 19.05.2021, the complainants with bona fide intentions further paid an amount of Rs. 1,98,400/- towards basic sale price & demanded interest from the respondent, thereby making 100% payment towards the "total price" of Rs. 19,84,000/- of the unit in question as per clause 2.1 of the buyer's agreement.
- v. That despite verbal & written assurances of the respondent to supply the demanded documents and justification, the respondent didn't pay any heed to the legitimate rights & demands of the complainants. Therefore, they sent a notice to the respondent followed by a final notice. However, the respondent neither replied to any of the notices nor provided any demanded documents/approvals & justifications.
- vi. That the complainants in good faith have already paid 100% total sale price of Rs. 19,84,000/- under "development linked plan" to the respondent as per clause 2.1 of the FBA.
- vii. That the respondent vide its letter/notice/demand dated 19.04.2021 has inter-alia raised an unlawful, arbitrary & unjustified demand of Rs.6,96,646/- as a pre-condition to handover the possession, as per details given below:

- The demand of Rs.4,34,000/- raised by the respondent towards “EDC” and “IDC” @ Rs. 3500/- per sq. yard is unlawful as the same is in contravention of clause 15.1.11 of the buyer’s agreement. IDC was also waived off vide memo dated PF-27A/2700 dated 08.02.2016 as issued by the Town and Country Planning Department, Haryana. There is no operating clause in the buyer’s agreement, which entitles the respondent to charge any EDC/IDC whatsoever from the complainants. The demand of EDC/IDC, more so at an arbitrary rate of Rs. 3500/- per sq. yard, is also in violation of pertinent conditions stipulated in the “license” as issued by the Town and Country Planning Department to the respondent.
- The respondent company has further raised a demand for Rs. 14,160/- towards “prepaid electrical charges” which is also unlawful & arbitrary for the reason that the “total price” of Rs. 19.84 lakhs are inclusive of these charges as per clause 2.1.5 of the buyer’s agreement.
- The respondent has breached its contractual obligations and not complied with clause 2.11, 2.27 & 3.1 of the buyer’s agreement & unlawfully demanded arbitrary amount in some unknown bank account number under various heads like “water meter charges”/ “one-time additional charges” etc.

- The respondent company has also failed in providing the complainants, a copy of “maintenance agreement”/other pertinent documents, whereby it is arbitrarily demanding Rs.57,944/- under the head “maintenance charges” to be paid to some unknown entity M/s. “Paras RE Facilities Management Pvt. Ltd”.
- viii. That the respondent has also not completed the project as per promised facilities/infrastructure. The respondent company has also failed in its legal duty to supply the complainants with a copy of OC/completion Certificate and has made an unlawful “offer of possession” without obtaining necessary approvals /NOC /clearances from the concerned government departments/competent authorities.
- ix. That the complainants have already paid the 100% of total price of the subject unit to the respondents as per terms of the buyer’s agreement. However, the respondent is still adamant on unlawful & unjustified demand of Rs.6,96,646/- under various heads which are in contravention of the Act/applicable laws/license and against the terms of the buyer’s agreement.
- x. That the complainant’s plea before this authority is that the respondent be restrained from demanding the unlawful and arbitrary demands and offer the possession & execute the

sale/conveyance deed in favour of the complainants in accordance with the law.

**C. Relief sought by the complainants**

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

- I. To declare the "Offer of Possession" Letter dated 19.04.201 along with all its annexures demanding unlawful sums of Rs. 6,38,702/- [Rs. 8,37,102 - (less) paid Rs. 1,98,400] under various components & Rs. 57,944/- on pretext of "maintenance charges" (i.e., Total Rs. 6,96,646), as null & void-ab-initio being unlawful, in breach of terms of agreement, unjust & arbitrary; also, the same being issued without obtaining the requisite approvals from competent authorities and without completing the promised facilities, amenities & infrastructure in the said project.
- II. Direct the respondent be also restrained by the learned authority to raise any fresh unlawful demand on the complainants qua said plot / project.
- III. Direct the respondent to complete all promised amenities in the project and then offer/handover physical possession/execute conveyance deed in favour of the complainants in accordance with the terms of agreement/applicable laws.
- IV. Direct the respondent to provide the copies of completion certificate OC and all other necessary approvals from the competent authorities to the complainants.



- V. The authority may be pleased to pass Litigation costs / any other relief (s) in favour of the complaints which this authority deems fit & in the interest of justice.
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 by the respondent**

6. The respondent contested the complaint on the following grounds. The submissions made therein, in brief are as under: -
- I. That the entire contents of the present complaint under reply are wrong and specifically denied unless specifically admitted hereinafter by the respondent. And further, that the respondent says and submits that the complainants have not come before this authority with clean hands. The complainants have suppressed vital facts of non-payment of entire consideration in terms of offer of possession dated 19.04.2021 and on this ground alone, the complaint is liable to be dismissed as not maintainable.
- II. That the complainants herein are not a genuine plot purchasers or consumers and purchased the said plot for commercial and investment purposes for which the jurisdiction of this authority cannot be invoked, since the object of the Act, 2016 is to protect the interests of the consumers and not the investors. The same is

also brought out from the fact that since the complainants have not been successful in selling a plot at a premium, they have filed this frivolous complaint just to avoid making the remaining payments in terms of the agreed payment plan.

- III. That the complainants themselves have been guilty of not adhering to the payment schedule and have made most of the payment after passing of the respective due dates. The same is not permissible in terms of the Act, 2016 and in view of the same, the complaint merits ought right dismissal.
- IV. That the project is registered under the Haryana Real Estate Regulation and Development Authority, vide registration number 38 of 2019, dated 08.07.2019 and is valid till 08.03.2025.
- V. That the instant complaint is liable to be dismissed as not maintainable also on the ground that the due date of the completion of the project has still not arrived. It is further submitted that the due date of completion of the project as informed before this authority and also reflected in RERA registration certificate of the respondent is 08.03.2025. In view of above, the instant complaint is filled prematurely and the same is liable to be dismissed.
- VI. That as a brief background of the case, it is submitted that the project is being developed as "Affordable Plotted Housing Colony" under "Deen Dayal Jan Awas Yojna, 2016" (DDJAY) situated at

Sector-5, Village Sohna, Tehsil Sohna, District Gurugram, Haryana after obtaining approvals, NOCs, permission from the competent authority. It is further submitted that the construction is as per the approved plan.

- VII. That the construction of the phase in which plot of the complainants is situated is already complete and they have also been offered with possession of the plot vide offer of possession dated 19.04.2021.
- VIII. That the complainants are liable to pay EDC/IDC and other statutory charges like any other allottee. The said amount goes to the Government. Similarly, the respondent is entitled to pay one-time additional charge, maintenance charges etc. in terms of agreement as these are service charges which are charges for the services availed/to be availed by the complainant presently or in near future.
- IX. That the respondent has even applied for completion certificate for the plotted colony vide letter dated 18.12.2020 and is still awaiting the completion certificate of the plot from the competent authority. It is pertinent to point out that the development work of plot is already complete, and the physical possession of the same has already been offered to the complainants on 19.04.2021. Further, the complainants themselves defaulted /delayed payment of most of their instalments and have even not

cleared their demand in terms of letter dated 19.04.2021. Thus, it is clear that the complaint has been filed in contravention of the provisions of the provision of the agreement of sale dealing with offer of possession and the complaint merits outright dismissal in view of the same.

- X. That the respondent even as on date is ready and willing to deliver the physical possession of the plot to the complainants provided, the complainants clearing their dues in terms of letter dated 19.04.2021 and the respondent is even ready to execute the conveyance deed in favour of the complainants, provided they are paying the stamp duty, registration charges etc. in this regard.
- XI. That the complainants are liable to pay holding charges to the respondent for their failure to take over possession of the plot within a period of 3 months from the date of such offer.
- XII. That the present complaint is not maintainable since the complainants are not only in breach of the agreement of sale have also violated provisions of Real Estate Regulation Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
- XIII. That this authority ought to take note of the fact that it is the respondent herein who has suffered due to the breaches committed by the complainants since it continued with the development despite the complainants delayed/defaulted in

paying their consideration. Moreover, due to the failure of the complainants in paying their complete consideration, the respondent suffered immense monetary hardship. It is most humbly prayed that this authority ensures that the complainants herein comply with the terms of the agreement and the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and they be directed to pay the balance consideration in terms of letter dated 19.04.2021.

- XIV. The Hon'ble Apex Court in the case ***Sarad Mani Kandappan and Ors Vs S. Rajalakshmi and Ors***, decided on ***04.07.2011***, (***2011***) ***12 SCC 18***, in **paras 33 and 34**, while interpreting similar contracts involving performance of reciprocal promises in respect of immovable properties has interpreted sections 52, 53 and 54 of the Indian Contract Act, 1872, to hold that in case of a contract wherein payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and he fails to do so, then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.
- XV. That the Hon'ble National Consumer Disputes Redressal Commission in the case of ***Manas Developers vs. Madhur Arjun Bhabal, RP 1553 of 2011***, decided on ***09.03.2015***, has held that

in cases where the complainants have failed to pay the amount in accordance with the agreement and are defaulters, then the builder cannot be held liable for delayed possession since the builder is not obligated to give possession without getting the entire payment with interest. It was further held that defaulters should not be rewarded for their own wrongs.

- XVI. Further, the Hon'ble Supreme Court of India in the case of *Supertech vs. Rajni Goyal*, decided on 23.10.2018, **2018(14) SCALE187**, has held that Consumers cannot be allowed to reap the benefits of their own wrongs by not taking possession when the same has been offered by the Builder and the computation of interest also closes on the said date.
- XVII. That in the present complaint under reply, the complainants have not been able to point out a single provision of either the Real Estate (Regulation and Development) Act, 2016 or the Haryana Real Estate (Regulation and Development) Rules, 2017 which has been violated by the respondent. Thus, the complainants are not entitled to any relief at all.

#### **E. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be 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**

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**

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*(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.*

9. 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 objections raised by the respondent**

**F.I. Objection regarding entitlement of DPC on ground of complainants being investor.**

10. The respondent has taken a stand that the complainants are investors and not consumer, therefore, they have not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the unit buyer's agreement, it is revealed that the complainants are buyers and has paid a total price of Rs.19,84,016/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who*



*subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Ltd. And Anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

#### **G. Findings on the relief sought by the complainants.**

- G. I** Declare the "offer of possession" letter dated 19.04.2021 along with all its annexure demanding unlawful sums of Rs.6,38,702/- [Rs.8,37,102/- (less) paid Rs.1,98,400/- under various components and Rs.57,944/- on pretext of "Maintenance Charges" (i.e., total RS.6,96,646/-), as null & void-ab-initio being unlawful, in breach of terms of agreement, unjust & arbitrary; also the same being issued without obtaining the requisite approvals from competent authorities and without completing the promised facilities, amenities and infrastructure in the said project.
11. The authority is of the considered view that there is no delay on the part of the respondent to offer of possession of the allotted plot to the complainants as per the terms and conditions of the agreement to sell

dated 10.02.2020 executed between the parties. But the validity of such offer of possession is in question.

### **Validity of offer of possession**

12. The authority would like to clarify regarding the concept of 'valid offer of possession'. It is necessary to explain this concept because after valid and lawful offer of possession, the liability of promoter for offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. **Possession must be offered after obtaining completion certificate-** The subject unit after its completion should have received completion certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads, and street lighting.
- ii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed as

invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if respondent has raised additional demands, the allottees should accept possession under protest.

13. In the present matter, the respondent has applied for the completion certificate from the concerned authority on 18.12.2020. There is no record available on the paper book as so show why the completion certificate has not been granted by the competent authority even after more than a year from its application. Neither the respondent has given any valid or specific reason to justify this delay. Accordingly, the authority keeping in view the above-mentioned facts considers that the respondent must not has applied a complete application for grant of completion certificate and has not rectified the defects, if any pointed out by the concerned authority. The authority further observes that the respondent/builder has not yet obtained completion certificate of the project in which the unit in question is located. So, without getting completion certificate, the builder/respondent is not competent to issue any offer of possession to the complainants. It is well settled that for a valid offer of possession, there are two pre-requisites as mentioned above. Hence, the intimation regarding the offer of possession offered by respondent/promoter on 19.04.2021 to the complainants is not a valid or lawful offer of possession.

14. The authority further adjudicates over the issue of validity of any demand over and above of the total sale price indicated in the BBA.

Clause 2.1 of the buyer's agreement dated 10.02.2020, deals with total sale consideration of the subject unit and the same is reproduce as under: -

**2. Terms**

- 2.1 *Subject to the terms and conditions as detailed in this Agreement, the Promoter hereby agrees to sell, transfer and convey to the Allottee and the Allottee agrees to purchase from the Promoter, Plot No. F-12, admeasuring 124 square yards ("Plot") for a total price of Rs.19,84,000/- which comprises of:*
- 2.1.1 *Ease price of Rs.16,000/- (Rupees Sixteen Thousand Only) per square yards;*
  - 2.1.2 *Proportionate price of the Common Areas and facilities = [As applicable];*
  - 2.1.3 *Taxes (consisting of tax paid or payable by the Promoter by way of GST, and cess or any other similar taxes which may be levied) upto the date of handing over the possession of the plot= [As applicable]*
  - 2.1.4 *Possession charges= [As applicable]*
  - 2.1.5 *Labour cess and electricity meter charges= [As applicable]*

15. The Haryana Real Estate (Regulation and Development) Act, 2016 provides a prescribed format under annexure – "A" titled as 'agreement for sale' of the Act of 2016. The authority observes that the buyer's agreement in the present case is not in the prescribed format. The total price of the plot has already been paid and after coming into force of Act of 2016, there cannot be anything over and above the total price indicated at the time of buyer's agreement. Every additional demand without any justification is hereby abrogated.

**G. II The respondent be also restrained by the learned authority to raise any fresh demand on the complainants qua said plot/project.**

16. The complainants have already made full payment towards the total sale consideration of the allotted unit i.e., Rs.19,84,016/- and since, the offer of possession has already been deliberated by the authority in the

previous relief as invalid, so the respondent is hereby restrained from raised any fresh demand till the issuance of a valid offer of possession to the complainants.

**G. III Direct the respondent to complete all promised amenities in the project and then offer/handover physical possession/execute conveyance deed in favour of complainants in accordance with the terms of agreement /applicable law.**

17. The respondent is directed to make a valid offer of possession and handover physical possession of the allotted unit to the complainants after obtaining part completion certificate from the competent authority. Further, the complainants are seeking relief of execution of conveyance deed. Clause 11 of unit buyer's agreement provides for 'conveyance of the plot' and is reproduced below:

**Clause 11. CONVEYANCE OF THE PLOT:**

**11.1** *"The Promoter, on receipt of Total Price as per Clause 2.1 of this Agreement and of all other dues and liabilities including stamp duty, registration charges and any other incidental charges or dues required to be paid for due execution and registration of the Conveyance Deed under the Agreement from the Allottee and upon execution of necessary documents including affidavits, etc. by **the Allottee, shall execute the Conveyance Deed' and convey the title of the Plot within 3 (three) months from the date of issuance of the completion certificate and the completion certificate, as the case may be, to the Allottee. However, in case the Allottee fails to make himself/herself available for the registration of Conveyance Deed or fails, objects or neglects in depositing the stamp duty, registration charges and all other incidental and legal expenses so demanded, within the period mentioned in the demand notice, then in addition to other provisions of this Agreement, the Allottee authorized the Promoter to withhold registration of the Conveyance Deed in favour of the Allottee till full and final statement of all dues and payment of stamp duty and registration charges to the Promoter is made by the Allottee.***

**11.2** *The promoter shall notify the date(s) for the purpose of execution and registration of the Conveyance Deed in favour of the Allottee. The Allottee agrees and undertakes to make himself available and present before the competent registering authority for the said purpose on the date(s) communicated to him. In the event that the execution of the Conveyance Deed is delayed for any reason whatsoever, the Allottee shall alone be liable to pay any increase in stamp duty, registration charges and other like charges before the execution of the Conveyance Deed.*

**11.3** *The Allottee shall, before taking possession of the said Plot clear all dues towards the plot and have the Conveyance Deed for the said Plot executed after paying registration fee and other charges, duties and expenses as set out in the Agreement”*

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

***“Section 17: - Transfer of title***

*17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be*

*carried out by the promoter within three months from date of issue of occupancy certificate.*

19. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining part completion certificate from the competent authority. On successful procurement of it, offer a valid make of possession to the complainants and execute the conveyance deed within 3 months from the date of obtaining the completion certificate.

**G.IV. Direct the respondent to provide the copies of completion certificate/OC and all other necessary approvals from the competent authority to the complainants.**

20. The respondent/builder has applied the part completion certificate on 18.12.2020. There is no record available on the paper book to show why the completion certificate has not been granted by the competent authority even after more than one year from its application. The respondent has not given any valid and specific reason to justify this delay. As per section 11(4)(b) of Act of 2016, the respondent/builder is under an obligation to supply a copy of the completion certificate to the complainants/allottees. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder: -

*"11(4) (b) The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."*

Even otherwise, it being a public document, the allottees can have access to the it from the website of DTCP, Haryana

**H. V The authority may be pleased to pass Litigation costs / any other relief (s) in favour of the complaints which this authority deems fit & in the interest of justice.**

21. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.
22. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 8.1 of the agreement to sell executed between the parties on 10.02.2020, the possession of the subject apartment was to be delivered on or before as per the date mentioned in the RERA certificate i.e., 08.03.2025. Therefore, the due date of handing over possession is 08.03.2025. The respondent has applied for completion certificate on 18.12.2020 from the concerned department. There is no record available on the paper book as so show why the completion certificate has not been granted by the competent authority even after



more than one year from its application. Neither the respondent has given valid and specific reasons to justify this delay. The authority is of the considered view that there is no delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement to sell dated 10.02.2020 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

#### **I. Directions of the authority**

23. 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 shall execute the conveyance deed within 3 months after obtaining the completion certificate from the concerned department.
  - ii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
  - iii. Shri. Sumit Nain, Engineer Executive of the authority is hereby directed to examine the documents on record and to take further suitable action such as initiating of penal proceedings, any other

action warranted to be taken under sections 35 and 36 of the Act, 2016. And the registration file shall also be consulted.

24. Complaint stands disposed of.
25. File be consigned to registry.

**(Vijay Kumar Goyal)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.04.2022