

Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them. Complainant was originally seeking relief of refund along with interest and therefore, vide order dated 22.10.2020, he was directed to appear before the Hon'ble Authority from next date of hearing. Complainant later moved an application dated 28.05.2021 under section 31 of RERA Act, 2016 for allowing him to amend his prayer clause so as to seek possession of the unit along with delay interest instead of refund. Same was allowed by the Authority vide order dated 19.08.2021.

A. UNIT AND PROJECT RELATED DETAILS:

2. Complainant had purchased a unit from the respondent. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, of unit have been detailed in following table:

SR. NO.	PARTICULARS	DETAILS
1.	Name of project	Express City, Sector 3, Kundli Sonapat
2.	Nature of the Project	Affordable Residential Plotted Colony
3.	Unit No.	Plot No. 74 Block E

Handwritten signature

4.	RERA registered/not registered	Registered - 273-2021
5.	PBA dated	12.05.2008
6.	Super Area	270 sq. yd.
7.	Basic Sale Price	11,88,000/-
8.	Paid by the complainant	17,94,270/-
9.	Deemed date of possession	12.05.2011
10.	Offer of possession	24.07.2013.

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

4. Complainant booked a unit in the respondents project admeasuring 270 sq. yards for basic sale price of Rs. 11,88,000/- against which the complainant has paid a sum of Rs. 17,94,638/-. Plot buyer agreement was executed on 12.05.2008. Plot no. 74 in Block E was allotted to the complainant. Clause 34 of the plot buyer agreement states that respondent shall handover the possession of the unit within 3 years from the date of agreement which comes out to be 12.05.2011.

5. Complainant submitted that he approached the respondent for possession of the unit on various occasions but there was no positive response from the respondent. He further averred that a letter dated 12.01.2015 was received by him from the respondent company, congratulating him for taking the physical possession of the unit in question. Complainant alleges that he

[Handwritten Signature]

has never been offered any physical possession of the said plot. Therefore as a clarification, complainant wrote a letter dated 03.10.2016 to respondent inquiring that how it has issued letter dated 12.01.2015 when no offer of possession was given to him and no response was received against the letter dated 03.10.2016.

6. Aggrieved by the acts and non fulfilment of obligations by the respondent company, the complainant filed a complaint before the Authority in the year 2018 bearing complaint no. 09 of 2018 titled G R. Soni vs Express City Pvt. Ltd. which was dismissed on first date of hearing vide orders dated 27.03.2018 on the pretext that since the respondent has received completion certificate dated 05.08.2013 and 19.11.2013, therefore, Authority has no jurisdiction to decide the controversy in question. Against the said orders complainant filed a review/rectification application under section 39 of the RERA Act, 2016 and the same was also dismissed vide order dated 08.06.2018.

7. Complainant approached the Hon'ble Appellate Tribunal and vide order dated 17.05.2019, Appellate Tribunal ordered that impugned orders dated 27.03.2018 and 08.06.2018 are set aside as the Authority has no jurisdiction to entertain the said relief and only Court of Adjudicating Officer will decide this question afresh in accordance of law and compliant was transferred to the Court of Adjudicating Officer. Therefore, the complainant has filed the present complaint.



C. RELIEF SOUGHT:

8. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund amount of Rs. Rs. 17,94,638/- (Rupees Seventeen Lakhs Ninety Four Thousand Six Hundred Thirty Eight Only) i.e. amount paid towards Plot in EXPRESS CITY, SECTOR-35, KUNDLI SONEPAT HARYANA
 - ii. To direct the respondent to pay interest on delayed possession for nearly 15 years as per Rule 15 of HARYANA REAL ESTATE (REGULATION AND DEVELOPMENT) RULES, 2017 since 22.02.2005 to the complainants;
 - iii. To direct the respondent to Pay Rs. 5,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment:
 - iv. To direct the respondent to Pay Rs. 5,00,000/- as compensation to the complainant as part of deficiency of service.
 - v. To direct the respondent to refund of all legal cost of Rs. 50,000/- (Fifty Thousand Only) incurred by the complainant.
 - vi. Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.

had

9. Complainant filed an application dated 28.05.2021 for amendment of prayer (i) of the complainant file under section 31 and 71 of RERA Act, 2016 read with rule 29 (1) of the RERA Rules, 2017. Herein the complainant has prayed to handover physical possession of booked unit instead of refund. The same was allowed by the Authority vide order dated 19.08.2021.

D. REPLY:

10. Respondent submitted that the present project is a registered project under RERA registration no. 273 of 2021. Respondent in his reply has submitted that the complainant had failed to make payments timely and has breached the payment clause. Further stated that the complainant stopped making payments and did not cleared his outstanding.

11. Respondent further apprised that that the complainant executed a Plot Buyer's Agreement on 12.05.2008 whereby the seller/respondent agrees to sell provisionally, a residential plot no.74, in Block 'E' measuring 270 sq. yards in the project of the respondent "EXPRESS CITY". It is submitted that the Complainant failed to fulfil his obligations towards the payment plan opted by him and made several defaults of payments and even refused to clear the outstanding against him at the time of offer of possession of the said plot to the complainant meaning thereby that the complainant since from the time of booking had sole intention to dupe the respondent and not to take possession of the allotted unit. The Respondent informed about the current status of the said Project to the complainant as and when enquired by the

complainant but then also the complainant withdrew from the project for the reasons best known to him and ignored all reminders to pay the outstanding dues against him.

12. It is submitted by the respondent that the complainant had been intimated regarding revision in layout plan and change in the allotment no. of the plot/unit of the complainant due to afresh approval of Layout by the Director, Town & Country Planning, Haryana, vide letter dated 9th Sep 2010. It was informed vide said letter that Plot No. E- 124 admeasuring 270 sq. yds. has been allotted to the complainant and has also been informed of revised EDC charges that had been revised by the Government of Haryana and requested the complainant to pay the balance amount of EDC and instalments.
13. Complainant gave no objection for change in Allotment no./area/plc and accepted the said allotment of Plot no. E-124 admeasuring 270 sq. yards instead of Plot no. E-74 vide letter dated 09.09.2010. Respondent issued various letters to the compliant for clearing outstanding dues which were not paid. It is submitted by the respondent that the project is complete and respondent issued an offer of possession dated 24.07.2013 to the complainant and requested to clear his dues but the complainant never turned for taking possession. Respondent further states that he received part completion certificate of the project on 05.08.2013 and another part completion certificate 19.11.2013. Therefore, he submitted that since



complainant had defaulted in making payment and offer of possession was also made therefore, compliant is liable to dismissed.

14. Complainant submitted his written submissions during hearing, wherein he has reiterated facts given in his reply file. He has submitted that respondent sent another letter to the complainant dated 30.10.2014, requesting therein to complete the necessary formalities for registration of the Plot/Unit allotted to the complainant and again requested vide said letter to clear outstanding/balance amount pending against the unit in question. However the complainant neither turned up to pay the balance amount nor submitted the requisite documents and information that was necessary to get the unit in question registered in the name of the complainant. It is submitted by the respondent that the relief as sought by the complainant in the instant complaint is not maintainable as the Respondent has discharged all obligations in full as per RE(R&D) Act and completed the construction of the project in question within the stipulated time period as agreed between the parties and mentioned in Builder Buyer's Agreement and also Notice of Possession had been issued to the complainant within time period, without any delay. Therefore, plea of complainant for delay possession interest when the construction is completed on time and possession had also been offered without any delay is untenable and needs to be set aside.

15. It is submitted by the respondent that the owners of the complainant's neighbouring plots have taken the possession, immediately



after the respondent had offered them the same along with the complainant and requested for dismissal of the complaint.

E. JURISDICTION OF THE AUTHORITY:

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

E.1: Territorial jurisdiction

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, Haryana, Panchkula shall be on the state of Haryana except district Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Kundli, Sonapat District, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2: Subject matter jurisdiction

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

(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:

34. Functions of Authority.—The functions of the Authority shall include—(f) 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;

In view of the Provisions of the Act of 2016 quoted above, this authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. ISSUES FOR ADJUDICATION:

- i. Whether the respondent has failed to fulfil its commitments and obligations as per the terms of Builder Buyer Agreement.
- ii. Whether the complainant is entitled to relief sought of delay interest and possession of the plot.

G. OBSERVATIONS OF THE AUTHORITY:

16. During proceedings learned counsel for the respondent submitted written submissions. Wherein, respondent has attached a copy of offer of

possession dated 24.07.2013. Respondent has further attached a letter dated 30.10.2014 calling complainant for registration of plot. Also respondent has attached a copy of part completion certificate dated 05.08.2013 for area measuring 84.05 acres, out of licensed land of 100.625 acres. Respondent has further relied upon possession letters issued to various allottees in the same block E.

17. Authority observes that respondent raised an issue of maintainability of this complaint stating that principle of res judicata will apply and therefore the said complaint shall be dismissed. Authority vide order dated 10.08.2022 had cleared that principle of res judicata will not apply because the complaint number 09 of 2018 was not dismissed on merit and merely on technical grounds. Relevant part of the order dated 10.08.2022 is reproduced below:

5. Authority, has gone through the facts and relevant documents submitted by both parties and observes as follow;

(i) As far as the maintainability of the complaint is concerned, Authority is of considered view that dismissal of complaint no. 9 of 2018 vide order dated 27.03.2018 was merely on technical grounds and not on merit. Further, Authority in its, order dated 25.11.2021 in complaint no. 1328 of 2020 titled as Manoj Kumar vs Dwarkadhish has held in its observations that merely obtaining completion certificate or part completion certificate will not exempt promoter from their obligation towards allottees. Relevant part of order is reproduced below;

vii) The Authority is of considered view that receipt of occupation or part completion

certificate will surely exempt the promoters from their obligation to get the project registered with Authority. However, receipt of occupation or part completion certificate from State Government Authorities will not exempt them from discharging their obligations towards allottees. It is reiterated that discharge of obligations towards State Government Authorities in respect of adherence to certain completion norms etc. are totally different from their obligations towards allottees undertaken by way of builder-buyer agreements or other direct or indirect representations. For instance, if against agreed consideration of Rs.50 lakhs, promoter demands Rs.75 lakhs on one pretext or the other, the promoter cannot put-forth an argument that complainants cannot approach court of law for redressal of his grievance.

Authority reiterates that principal of res judicata will not affect the maintainability of present complaint and will not exempt respondent from their obligations towards allottees. Therefore, the present complaint is maintainable.

18. After considering facts and circumstances of the case and going through oral as well as written arguments of the complainant, Authority observes that the builder-buyer agreement was executed on 12.05.2008. Basic sale price for the plot was agreed to be 11,88,000/-. Complainant had paid over Rs. 17,94,638/- ,i.e., more than agreed basic sale price by 24.08.2013. The deemed date of possession was fixed to be 12.05.2011. However, perusal of record reveals that offer of possession was given on 24.07.2013. Respondent has nowhere pleaded that the said offer of possession issued to the complainant was accompanied by part completion certificate. Perusal of record reveals that part

completion certificate was issued to the respondent/promoter dates 05.08.2013. It is further clear that letter dated 30.10.2014 was merely a letter requesting complainant for completing the necessary formalities and pay the balance amount. However, such communication cannot be deemed to be an offer of possession. When the offer of possession was not accompanied by part completion certificate at the time of offer of possession therefore, offer of possession issued on 24.07.2013 is not a valid and legal offer of possession.

Thereafter it is not proved on record that after receiving part completion certificate the respondent has offered any fresh offer of possession. As per the principle laid down by the Authority in such circumstances, the complainant is entitled to delay interest from the deemed date of possession till date of obtaining part completion certificate.

19. Therefore, Authority is of considered view that offer of possession issued on 24.07.2013 is not a valid offer of possession and till date no valid offer of possession has been issued to the complainant. The statement of accounts given by the respondent to complainant have to be sent to complainant afresh. Therefore, complainant is entitled to the relief of delay interest from the deemed date of possession i.e. 12.05.2011 till the date of obtaining part completion certificate i.e. 05.08.2013.



20. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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.”

21. The legislature in its wisdom in the subordinate legislation under the provisions 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.

22. 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. 08.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be SBI MCLR + 2% , i.e., 10.60%.

23. The term 'interest' is defined under Section 2(z) of the Act which is as under:

(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;

Accordingly, respondent will be liable to pay the complainant interest from the date, amounts were paid by him till the date of order and thereafter monthly interest till actual handing over of possession of the unit.

24. Authority has got calculated the total amount to be paid by the respondent alongwith interest calculated at the rate of 10.60% till the date of this order in the captioned complaint; details are given in the table below:

Unit Details	Principal Amount (in Rs.)	Interest @10.60% till 08.02.2023 (in Rs.)	Total delayed interest to be paid by respondent to complainant (in Rs.)
E- 124	Rs. 17,94,270	Rs. 9,46,229/-	Rs. 27,40,499/-

H. DIRECTIONS OF THE AUTHORITY:s

25. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay delay interest @ 10.60 % to the complainant as is specified in the table above from the deemed date of possession i.e. 12.05.2011 till the date of obtaining part completion certificate i.e. 05.08.2013.
- (ii) Respondent is further directed to issue a fresh offer of possession to the complainant along with fresh statement of accounts mentioning all receivables and payables after adjusting the delay interest.
- (iii) After receiving a fresh offer of possession alongwith statement of account. The complainant may challenge any illegal demand issued by the respondent by filing a fresh complaint in the Authority.

had

(iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

26. This complaint is, accordingly, **disposed of**. Files be consigned to the record room after uploading of order on the website of the Authority.


.....
Dr. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]