



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	421 of 2022
Date of filing.:	10.03.2022
First date of hearing.:	10.05.2022
Date of decision.:	28.02.2023

Gulshan Kumar Narang
R/o H.No. 137-B, U & V Block
Shalimar Bagh, Delhi, 110088

....COMPLAINANT

VERSUS

TDI Infracorp (India) Ltd.
Upper Ground Floor, Vandana Building
11 Tolstoy Marg,
New Delhi, 110001

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 28.02.2023

Hearing: 5th

Present: - Mr. Madhur Panwar, Counsel for complainant through
VC
Mr. Ajay Ghanghas, Counsel for respondent

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH- MEMBER)

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and 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.

A. Unit and Project Related Details:

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

S.No.	Particulars	Details
1.	Name of the project.	Lake Drive Apartments, Lake Grove City, NH-1, Kundli, District Sonapat, Haryana
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Registered vide Registration no. 43 of 2017 dated 11.08.2017
5.	Date of completion of project as declared	10.08.2021

	under section 4(2)(1)(c)	
6.	Details of unit.	T-14/0302, 3rd Floor, Phase 1
7.	Date of Agreement to sell	21.09.2019 (annexed at page 26 of the complaint file)
8.	Due date of possession	Not provided in the agreement
9.	Total sale consideration	₹45,35,079/-
10.	Amount paid by complainant	₹ 41,19,539/-
11.	Offer of possession.	29.12.2021
12.	Status of occupation certificate	Not known

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that original allottees namely Mr Ajay Kumar Sobti and Mrs. Kiran Sobti had booked a flat bearing no. T-14/0302 3rd floor, phase -1 in the project of respondent namely "Lake Drive Apartment" in Lake Grove City, Kundli, district Sonapat by depositing an amount of Rs. 2,50,000/- on 17.09.2014. Thereafter, on 21.09.2019, complainant purchased the rights qua flat no. T-14/0302 from original allottees. Complainant executed an agreement to sell dated 21.09.2019 with the respondent in respect of the flat in question. No deemed date of delivery has been mentioned in the agreement to sell. However, at the time of execution of said

agreement, since the deemed date of delivery of possession was already due to the original allottees, respondent had promised to deliver possession of the flat to the complainant by 28.09.2019. Complainant has paid ₹ 41,19,539/- till date against total sale consideration of ₹ 45,35,079/-. However, respondent failed to deliver possession of the flat by 28.09.2019. Then after a delay of more than two years from the deemed date of delivery , i.e on 29.12.2021, respondent issued an offer of possession for fit out works along with unjustified demand of ₹ 13,34,370/-, and that too without obtaining occupation certificate. It is submitted that possession of the flat has been delayed beyond the time period as promised at the time of execution of agreement.

C. RELIEF SOUGHT

4. That the complainant seeks following relief and directions to the respondent:-

- i. That the respondent be directed to compensate the complainant for delay in completion of the project
- ii. That the respondent be directed to refund any liability towards GST.
- iii. That respondent be directed to withdraw the illegal demand charged as per the final statement of accounts dated 29.12.2021.

- iv. That respondent be directed to compensate the complainant for a sum of ₹ 5,00,000/- as damages on account of mental agony , torture and harrasment and ₹ 50,000/- as legal fees.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

5. Respondent in its written submissions has submitted that the present project is registered with the Authority vide registration no. 43 of 2017. Respondent has acknowledged endorsement of rights qua flat in question in favour of the complainants towards original booking application vide agreement to sell dated 21.09.2019. It is admitted that original allottees has paid an amount of ₹ 25,73,159/- till 26.07.2018 and thereafter, complainant has paid an amount of ₹ 15,46,380/- over and above the amount paid by original allottees. Respondent has denied that complainant was promised delivery of possession of flat within one week of execution of agreement to sell. It is submitted that after completion of construction work, an offer of possession for fit out works was issued to the complainant on 29.12.2021. However, the complainant failed to come forward to take possession of the flat. There is still an amount of ₹ 13,34,370/- outstanding against the complainant. There has been default on the part of the complainant in making payments towards the booking made in the said project and

coming forward to accept possession. Therefore, complainant is not entitled to any relief.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

6. During oral arguments, learned counsel for the complainant submitted that complainant had purchased the flat in question vide agreement to sell dated 21.09.2019 towards the original booking application made by the original allottees with the respondent in the year 2014. Respondent has endorsed transfer of right qua said flat and accordingly, complainant had stepped into the shoes of the original allottees. At that time, respondent had orally assured the complainant that possession of the same would be delivered within a week from date of agreement to sell i.e by 28.09.2019 as the delivery of possession was already due to the original allottees. However, respondent issued an offer of possession for fit out works after a delay of more than two years that too without obtaining occupation certificate. Along with said offer of possession, respondent also raised a demand of ₹ 13,34,370/- which was unjustified and illegal for reasons already submitted in writing. On hearing date 10.08.2022, Authority after considering all submissions and documents placed on record has already adjudicated the case, granting relief of payment of delay interest from the deemed date of offering possession up to

lawful offer of possession after receipt of occupation certificate from the department concerned.

F. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

7. Mr. Ajay Ghanghas, learned counsel for the respondent reiterated his averments as filed in written submission.

G. OBSERVATIONS MADE DURING HEARING DATED 10.08.2022

8. During the course of hearing dated 10.08.2022, the case was heard at length. After hearing both parties, a detailed order was passed by the Authority wherein facts of the case and arguments advanced by both parties were recorded. Order dated 10.08.2022 is reproduced below for reference-

“1. *Learned counsel for the complainant has stated facts of the case that case of the complainant is that original allottees booked a flat bearing no. T-14/0302 having area of 1000 sq. fts. in the project of respondent namely “Lake Drive Apartment” in TDI Lake Grove City, Sonapat by depositing initial amount of Rs. 2,50,000/- on 17.09.2014. Complainant purchased rights qua flat from original allottees on 21.09.2019. Builder Buyer Agreement (herein after referred to as BBA) was executed between parties on 21.09.2019. No deemed date of delivery has been mentioned in the BBA but respondent had promised to deliver flat to the complainant by 28.09.2019. Complainant has paid Rs. 41,19,539/- till date against total sale consideration of Rs. 45,35,079/.*

Main grouse of the complainant is that respondent has offered him fit out possession on 29.12.2021 along with a demand of Rs. 13,34,370/-, after a delay of about two years from the deemed

date of delivery and that too without obtaining Occupation Certificate. Therefore, complainant has sought upfront interest on account of delay in handing over of possession apart from monthly interest till the date of legally valid handover of possession i.e. after receipt of Occupation Certificate.

He has also impugned demands made by the respondent vide said offer letter against following components:

- i) Interest Free Maintenance Charges Rs. 52,560/-
- ii) Miscellaneous Expenses (ME) Rs. 11,800/-
- iii) External Development Charges (EDC) Rs. 29,602/-
- iv) Goods & Service Tax (GST)
- v) Electrical and Fire Fighting Charges (EEFC) 25,233/-
- vi) Unilateral Increase in area from 1000 sq. fts. to 1095 sq. fts. Rs. 8,10,312/-
- vii) Club Membership Charges (CMC) Rs. 88,500/-
- viii) Open Car parking Rs. 1,75,000/-
- ix) Late Payment Fee Rs. 1,41,373/-

Complainant has requested that these illegal charges be quashed.

2. Learned counsel for the respondents stated that respondent has applied for grant of Occupation Certificate for the project. Further, respondents had offered fit out possession to the complainant on 29.12.2021 but the complainant has not been coming forward to take possession of the flat. Learned counsel for respondent has also denied that the deemed date of delivery of the flat

was 26.08.2019. Learned counsel for respondent has sought time to present his arguments.

3. After hearing both parties and perusal of records of the case, Authority observes that Complainant has paid Rs. 41,19,539/- till date against total sale consideration of Rs. 45,35,079/-. Respondent has made an offer for fit out possession dated 29.12.2021. No documents have been placed on record by respondent to show present status of Occupation Certificate of the project. Since there is no information regarding status of receipt of Occupation Certificate, Authority is of the view that said offer of fit out possession dated 29.12.2021 is not legal since it is without Occupation Certificate. In such circumstances Authority concludes that a proper and lawful handing over of possession is yet to take place. Therefore, proper possession is yet to be offered by respondent. Therefore, Authority, prima facie, observes that respondent is liable to pay upfront interest to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, from the deemed date of offering possession up to lawful offer of possession after receipt of Occupation Certificate from the department concerned.

Further, no deemed date of delivery has been mentioned in the BBA. As per complainant's version respondent had promised to deliver possession of flat to him on 26.08.2019 which was after one week of execution of the BBA. Respondent has categorically denied in his reply that 26.08.2019 was not the deemed date of delivery. In such circumstances, when the BBA does not mention deemed date of delivery, Authority observes that deemed date of delivery of flat will be taken as three years from the date of making substantial payments which was 26.12.2014 when complainant had paid approximately 50% of total sale consideration. Meaning thereby that complainant's flat should have been delivered to him by 26.12.2017. Thus, the deemed date for purpose of calculation of interest

for delay in delivery of possession of plot is being taken as 26.12.2017.

Authority further observes as follows:

i) **Interest Free Maintenance Security (IFMS):**

The Authority vide order dated 01.04.2021 in Complaint No. 464 of 2019 titled Kanwar Singh vs Mudra Finance Ltd. has laid down certain principles in regard to IFMS, according to which IFMS is a non-refundable interest free security contributed by the allottees for carrying out capital works in future. Thus, extra money collected on account of IFMS has to be handed over by promoter to Association of allottees. IFMS is over and above the basic sale consideration and it cannot be utilized by the promoter.

Thus, IFMS money is payable by allottees but in the present case Final statement of account dated 29.12.2021 reflects that complainant has already paid Rs. 52,560/- but it seems that it has again shown payable by mistake. Therefore, no amount on account of IFMS remains to be paid by the complainant. Therefore, Rs. 52,560/- shown as balance on account of "Interest Free Maintenance Security" is quashed.

ii. **Miscellaneous Expenses (ME):**

The respondent informed that this amount has been charged on account of the fee payable to the advocate for carrying out registration formalities etc. It is ordered that in case complainant do not wish to engage any advocate to carry out registration formalities, the demand made by the respondent towards "Stamp Duty/Miscellaneous charges" shall be withdrawn.



iii. **External development Charges (EDC):**

Learned counsel for the complainant has stated that complainant has already paid Rs. 3,11,600/- on account of EDC as reflected in Annexure C-3. Therefore, additional demand of Rs. 29,602/- as External Development charges vide offer letter dated 29.12.2021 is illegal and unjustified.

On perusal of Annexure C-3, Authority observes that respondent has already charged Rs. 3,11,600/- towards total sale consideration Rs. 45,35,079/-. In such scenario, respondent is directed to give justification for additional demand of Rs. 29,602/- on next date of hearing by way of filing affidavit with an advance copy to the complainant.

iv. **Goods and Service Tax (GST):-**

Another grievance of complainant is that respondent is charging Goods and Service Tax (GST). The GST is payable on the date of execution of the conveyance deed, therefore, the respondent will be entitled to charge GST at the rate which will be applicable on the date the conveyance deed is executed and registered in favour of the complainant.

v. **Electrical and Fire Fighting Charges (EFFC):**

Learned counsel for the complainant has stated that complainant has already paid Rs. 2,65,500/- on account of EFFC as reflected in Annexure C-3. Therefore, additional demand of Rs. 25,223/- as EFFC vide offer letter dated 29.12.2021 is illegal and unjustified.

On perusal of Annexure C-3, Authority observes that respondent has already charged Rs. 2,65,500/- towards total sale consideration Rs. 45,35,079/-. In such scenario, respondent is directed to give justification for additional demand of Rs.

25,223/- on next date of hearing by way of filing affidavit with an advance copy to the complainant.

vi. **Increase in area:**

Learned counsel for the complainant has stated that super area taken into account by respondent while preparing the statement of account dated 29.12.2021 was 1095 sq. fts. instead of 1000 sq. fts as per booking/ allotment. Thus, respondent vide said offer letter has increased the super area unilaterally from 1000 sq. fts. to 1095 sq. fts. which has put an additional financial burden of Rs.8,10,312/-on complainant. In view of above, Authority directs respondent to file Component wise super area chart as per original sanctioned building plans and revised plan if any with an advance copy to the complainant in form of affidavit at least fifteen days before next date of hearing.

vii. **Club Charges (CMC):**

The respondent has raised a demand of Rs. 88,500/- on account of Club Membership charges. Authority decides that the club membership charges shall be payable by the complainant only if the club has been constructed, irrespective of the fact that it is functional or not. Both parties are directed to place photographs on record in support of their arguments with advance copy to each other before next date of hearing.

viii. **Car Parking Charges (VPK):**

Another grievance of the complainant is that the charges levied for open car parking space are unreasonable. Space meant for open parking provided in any real estate project is undoubtedly part of common areas and any part of common area whether a space for open parking or any other area meant for other activities cannot be sold by any of the promoter even if there is any provision in any of the bilateral agreement executed between promoter and allottee. Hon'ble Apex Court vide its judgment

in Nahalchand Laloochand Pvt. Ltd. V Panchali Co-op, Housing Society Ltd. (2010, 9 SCC, 536) has held that developer cannot in law realize any amount from the purchasers towards open/stilt car parking. The promoter has no right to sell any portion of such building which is not 'flat'. Thus, respondent can only charge for covered car parking space. In view of above, amount charged from complainant for open car parking deserves to be quashed.

ix.

Late Payment Charges:

The complainant is also aggrieved on account of demand of Rs. 1,41,373/- as interest on delay in making payment of due instalments. Admittedly, Complainant has paid Rs. 41,19,539/- till date against total sale consideration of Rs. 45,35,079/ but till date flat has not been handed over to complainant. Even, no documents have been placed on record by respondent to show present status of Occupation Certificate of the project. Therefore, Authority has held that offer of fit out possession letter dated 29.12.2021 is not legal since it is without Occupation Certificate. In such circumstances Authority concludes that a proper and lawful handing over of possession is yet to take place. Therefore, Authority will consider that proper possession is yet to be offered, and, respondent is liable to pay upfront interest to the complainant as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, from the deemed date of offering possession up to lawful offer of possession after receipt of Occupation Certificate from the department concerned. Thus, when respondent is himself at fault and liable to pay interest for delay in handing over possession of flat, he cannot be allowed to charge late payment charges form complainant. Thus, said late payment charges appear prima facie to be unjustified. Respondent is granted opportunity to justify levy of said late payment charges.

4. *With these observations, case is adjourned to 27.09.2022 on request of learned counsel for respondent. Both parties shall file information/documents as mentioned above with an advance copy to each other at least two weeks before next date of hearing. Respondent shall pay outstanding cost of Rs.5,000/- and Rs. 2,000/- to the Authority and complainant respectively on next date of hearing.*”

9. In present complaint, complainant has prayed for direction to respondent to pay delay compensation for the delay caused in delivery of possession and to quash the illegal demands raised along with offer of possession date 29.12.2021. Vide order passed on hearing dated 10.08.2022, Authority, after considering all facts and submissions, had observed that respondent promoter is liable to pay interest to the complainant as per provisions of section 18 of the RERA Act, 2016 read with Rule 15 of the HRERA Rules, 2017, on account of delay caused in handing over of possession from deemed date of possession till the actual / legally valid delivery of possession of the flat is made after obtaining occupation certificate. Further, out of total demand of ₹ 13,34,370/- raised by the respondent, Authority had quashed the demands raised on account of IFMS charges, Miscellaneous expenses and car parking charges for reasons recorded in writing as mentioned in para 3 of order dated 10.08.2022 (also reproduced in para 6 of this order). With regard to the remaining five demands raised on account of

EDC, EFFC, increase in area charges, club charges and late payment charges, respondent sought an opportunity to file relevant information/documents in justification of the demand so raised. Charges raised towards remaining five demands are reproduced below:

S. No	Particulars	Amount (in ₹)
1.	EDC	29,602/-
2.	EFFC	25,223/-
3.	Unit Cost	8,10,312/-
4.	Club charges	88,500/-
5.	Late payment charges	1,41,373/-

10. Case was adjourned for the limited purpose of justification of the aforementioned five demands raised by the respondent. Respondent was granted time to file relevant information/ documents for providing justification of aforementioned demands.
11. Despite availing two opportunities, respondent failed to file requisite information/documents in support of its contention with regard to the demands raised on account of EDC, EFFC, Increase in area charges, club charges and late payment charges.
12. Today, learned counsel for the respondent stated that there are no pending receivables to be paid by complainant in respect of the five

demands raised on account of of EDC, EFFC, Increase in area charges, club charges and late payment charges vide statement of account dated 29.12.2021. Learned counsel for the respondent raised no further arguments.

H. JURISDICTION OF THE AUTHORITY

13. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

H.1 Territorial Jurisdiction

As per notification no. 1/92/2017 ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be over entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Sonipat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

H.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:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

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.

In view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

I. ISSUES FOR ADJUDICATION

14. Whether the complainants are entitled to receive delay interest on deposited amount on account of delayed delivery of possession in terms of Section 18 of Act of 2016?

J. OBSERVATIONS OF THE AUTHORITY

15. In present complaint, the flat in question had originally been booked vide application form dated 17.09.2014 by original allottees namely Mr. Ajay Kumar Sobti and Mrs. Kiran Sobti. Thereafter, complainant had purchased the rights qua T-14/0302 3rd floor, phase -1 on 21.09.2019 . Respondent had endorsed the transfer of rights in favour of the complainants vide agreement for sale dated 21.09.2019. In clause 'g' of said agreement the transfer of flat has been made in respect of the original application/booking form dated 17.09.2014 applied by original allottees. Accordingly complainant is a subsequent allottee in respect of the flat in question.
16. The RERA Act 2016, provides the definition of the term "allottee" in Section 2 (d). The definition of the allottee as provided in the Act is reproduced as under:

"2

*In this Act, unless the context otherwise requires-(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".*



The term "allottee" as defined in the Act also includes and means the subsequent allottee. An original allottee is a person to whom an apartment, plot or building has been allotted or sold by the promoter. Thereafter, a person who acquires the said allotment of apartment, plot or building through sale, transfer or other wise and in whose name the transfer of rights has been endorsed by the promoter, becomes a subsequent allottee.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that the act does not differentiate between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only

remain for identification/ use by the promoter. Therefore, the Authority does not draw any difference between the allottee and subsequent allottee per se.

17. Reliance is placed on the judgement dated 26.11.2019 passed in consumer complaint no. 3775 of 2017 titled as Rajnish Bhardwaj Vs. M/s CHD Developers Ltd. by NCDRC wherein it was held as under:

"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flat and resale of flat does not come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water....."

18. Authority concurs with the Hon'ble NCDRC's decision dated 26.11.2019 in **Rajnish Bhardwaj vs. M/s CHD Developers Ltd. (supra)** that it is irrespective of the status of the allottee whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents clearly implies his acceptance of the complainant as an allottee.
19. Therefore, taking the above facts into account, the Authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying

a unit/ plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottee is adjusted against the unit in question and not against any individual. Furthermore, even in the agreement for sale with the subsequent allottee, the date of booking as mentioned in clause (g) remains the original date of booking i.e 17.09.2014. The subsequent allottee stepped into the shoes of the original allottee w.e.f 17.09.2014 and therefore, this date shall be considered for determining the rights and liabilities qua the promoter.

20. Complainant has filed this complaint, seeking relief of grant of delay interest on account of delay caused delivery of possession by the respondent and quashing of unjustified demand of ₹ 13,34,370/- raised vide final statement of account dated 29.12.2021.
21. During the course of hearing held on 10.08.2022, this case was heard at length and all facts and submissions put forth by both the parties have been taken on record, which has been reproduced in para 8 of this order. On perusal of record and after considering oral submissions of both parties, Authority had passed a detailed order wherein it was observed that complainant had purchased the rights of the original allottees against original booking made on 17.09.2014. Respondent had endorsed the rights in respect to that flat in favour of the complainant vide agreement

to sell dated 21.09.2019. Complainants were verbally promised that possession of the flat will be delivered within one week of executing the agreement to sell i.e by 28.09.2019, since the possession of the flat was already due to the original allottees by then. However, respondent failed to deliver possession within promised time. After a delay of more than two years, respondent issued an offer of possession for fit out works dated 29.12.2021 without obtaining occupation certificate and raised an unjustified demand of ₹ 13,34,370/-. Complainant challenged the alleged demands as being unjustified and approached the Authority seeking relief of grant of delay interest on account of delay caused delivery of possession and quashing of unjustified charges raised vide final statement of account dated 29.12.2021. No documents were placed on record by respondent to show present status of occupation certificate of the project. Since no document regarding status of receipt of occupation certificate has been placed on record by the respondent, Authority concluded that the offer of fit out possession dated 29.12.2021 is not legal/invalid. In such circumstances, a proper and lawful handing over of possession is yet to take place. Therefore, considering all facts and submissions, Authority in its interim order dated 10.08.2022 had held that respondent promoter is liable to pay interest to the complainant as per provisions of section 18 of the RERA Act, 2016 read with Rule 15 of the HRERA Rules, 2017, on account of delay caused in handing over of possession from deemed date

of possession till the actual / legally valid delivery of possession of the flat is made after obtaining occupation certificate. With regard to the alleged demands raised vide final statement of accounts dated 21.09.2019, all demands were properly adjudicated by the Authority for reasons recorded in writing in order dated 10.08.2022. With regard to five demands raised on account of EDC, EFFC, increase in area charges, club charges and late payment charges, respondent sought an opportunity to file relevant information/documents in justification of the demand so raised.

22. Today, learned counsel for the respondent stated that he does not wish to file any documents pertaining to justification of remaining five demands raised on account of EDC, EFFC, increase in area charges, club charges and late payment charges as there are no more receivables to be paid by the complainant in respect of these five demands. Therefore, the issue of demands raised by complainant does not survive and hence the complainant is not liable to pay the same.

23. In view of the above submissions, Authority confirms its findings as observed vide order dated 10.08.2022. Complainant is entitled to receive delay interest with effect from deemed date of possession up to lawful offer of possession after receipt of occupation certificate from the department concerned as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017. 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. 28.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

24. With regard to the deemed date of possession, vide order dated 10.08.2022 it was observed as follows:

“ Further, no deemed date of delivery has been mentioned in the BBA. As per complainant's version respondent had promised to deliver possession of flat to him on 26.08.2019 which was after one week of execution of the BBA. Respondent has categorically denied in his reply that 26.08.2019 was not the deemed date of delivery. In such circumstances, when the BBA does not mentions deemed date of delivery, Authority observes that deemed date of delivery of flat will be taken as three years from the date of making substantial payments which was 26.12.2014 when complainant had paid approximately 50% of total sale consideration. Meaning thereby that complainant's flat should have been delivered to him by 26.12.2017. Thus, the deemed date for purpose of calculation of interest for delay in delivery of possession of plot is being taken as 26.12.2017.

25. The flat in question had been booked in the year 2014 by the original allottees and complainant stepped into the shoes of the original allottees on 21.09.2019 and was entrusted upon all rights and liabilities of the original allottee. Accordingly, complainant had

acquired the rights held by the original allottees with respect to delivery of possession. As it is already observed, in the absence of deemed date of delivery of possession, a period of 3 years from date of substantial payment is taken as a reasonable period for completion of construction work and delivery of possession which in this case works out to 26.12.2017. Possession of the booked flat should have been delivered to the original allottees by 26.12.2017. Although the rights qua the flat in question have been transferred in favour of the complainant on 21.09.2019 however, the amount of ₹ 25,73,159/- which was deposited by the original allottee kept being in the custody of the builder. The amount has been in respect of the booking towards the flat in question and not in respect of an individual. The Act does not distinguish between the original allottee and subsequent allottee. The Act by virtue of Section 18 has created a statutory right of delay possession charges in favour of allottee. No doubt the subsequent allottee is presumed to know the new date of completion as declared by the promoter at the time of grant of registration but that does not abrogate the statutory rights of subsequent allottee. Respondent has wrongfully utilised the amount for more than five years whereas the complainant has not been able to enjoy the rights pertaining to the unit till date. Therefore, accordingly the Authority is of the view that in case the subsequent allottee has stepped into the shoes of original

allottee after RERA Act coming into force and after registration of the project in question, the delayed possession shall be granted w.e.f 26.12.2017 (3 years from the date of date of making substantial payments). The deemed date of possession for the purpose of calculation of interest on account of delay caused in delivery of possession is being taken as 26.12.2017.

26. Authority has got calculated the interest payable to the complainant till date of order i.e 28.02.2023 (at the rate 10.70%) which works out to ₹ 17,73,787/- and further monthly interest of ₹ 31,346/-.

27. Delay interest mentioned in aforesaid paragraph has been calculated on total paid amount of ₹ 35,64,232/-. Said amount has been worked out after deducting charges of taxes paid on account of Service tax and EDC from the total paid amount of ₹ 41,19,539/-. Total paid amount has been calculated as per the receipts annexed by the complainant and service tax has been deducted as per the demand letter sent alongwith offer of possession. The amount of such taxes is not payable to the builder, rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department, interest thereon becomes payable only to the department concerned and builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In

other words, it can be said that amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

28. While filing the complaint in the relief sought, the complainant has also sought that respondent be directed to compensate the complainant for a sum of ₹ 5,00,000/- as damages on account of mental agony, torture and harrasment and ₹ 50,000/- as legal fees. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12,14, 18 & section 19 of the Act, the complainant may file a separate complaint before Adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the HRERA rules. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

K. DIRECTIONS OF THE AUTHORITY

29. Hence, 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:

27 

- (i) Respondent is directed to pay upfront delay interest of ₹ 17,73,787/- (calculated till date of order i.e 28.02.2023) and further monthly interest of ₹ 31,346/- till the date a valid offer of possession is issued to the complainant after obtaining occupation certificate. to the complainant.

30. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]