



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**Date of decision:** 27.04.2023

Name of Builder	Ras Developments Pvt. Ltd
Project Name	Ras residency-I

Sr. No.	Complaint No.	Complainant
1.	1808 of 2022	Pratap Singh S/o Sh. Maluk Singh R/o H.No. 235, Sector -5, Urban Estate, Karnal, Haryana-132001
2.	1843 of 2022	Mrs. Rajwant Singh, w/o Mr. Pratap Singh, R/o H.no.235, sector-5, Urban estate

**Versus**

M/s Ras Developments Pvt. Ltd  
812-812 A, 8<sup>th</sup> floor, chiranjive tower, Nehru Place  
New Delhi-110019

Respondent

**CORAM:** Dr. Geeta Rathee Singh  
Nadim Akhtar  
Member  
Member

**Present: -** Mr. Anmol Jindal, learned counsel for the complainant  
through VC  
Mr. Shubhnit Hans, Learned counsel for the respondent

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through VC

**ORDER (NADIM AKHTAR-MEMBER)**

Present complaints have been filed by complainants 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 and 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.

1. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent. Complaint no. 1808 of 2022 titled "Pratap Singh Vs RAS Developments Pvt. Ltd.", has been taken as a lead case for disposal of both these matters.

**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 possession, delay period, if any, in lead complaint case no. 1808 of 2022, have been



detailed in following table:

S.N.	Particulars	Details
1.	Name of the project	Ras-Residency -1, Land measuring 5.1875
2.	Nature of the Project	Residential apartment
3.	RERA Registered/not registered	Registered
4.	Memorandum of Understanding	19.05.2020
5.	Allotment Letter/ agreement	09.05.2017
6.	Total sale consideration	20,50,000/-
7.	Amount paid by the complainant	Full payment made
8.	Due date of possession	18 months from signing of MOU i.e 19.11.2021
9.	Offer of possession	Not made

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

1. That the complainant had booked a residential apartment bearing flat no. T-201 admeasuring 1345 sq. ft. in the project of the respondent namely 'RAS Residency' situated at sector-35, Karnal. Allotment letter was issued to the complainant on 09.05.2017. Pursuantly, Memorandum of





understanding was executed between the complainant and the respondent on 19.05.2020.

2. That as per the MOU, possession was to be delivered within 18 months from the date of execution of MOU. Therefore, the date of possession comes out to be 19.11.2021. The total sale consideration was 20,50,000/- and the complainant has paid the entire amount till date as demanded by the respondent. Copies of the proof of payments have been annexed as Annexure C-5 and C-5 A.
3. As per the condition of MOU, the respondent either has to deliver the flat in 18 months or buy the flat back from the complainant at the price of 28,00,000/-. Pursuantly, at the time of signing of MOU, respondent presented a post-dated cheque of erstwhile Oriental Bank of Commerce (Now Punjab National Bank). Copy of the cheque is annexed as Annexure C-4.
4. That when possession was to be handed over after a period of 18 months, complainant visited the site and to his utter shock and surprise, basic structure of the flat was not complete. The complainant had approached the respondent in regard to the same but all in vain.
5. The complainant went to the bank for encashment of the cheque which was given by the respondent at the time of signing of MOU. However, the bank informed the complainant that Oriental Bank of Commerce did not exist

*hand*

anymore and has merged with PNB. Therefore, cheque issued by the respondent became invalid.

6. That bank was merged on 01.04.2020, whereas complainant was given the cheque on 09.05.2020.
7. Complainant visited the site several times. However, no progress towards the completion can be seen and nothing was heard by the complainant regarding the progress of the project.
8. That on 11.04.2022, complainant served a legal notice to the respondent to handover the actual physical possession and pay the compensation of Rs 1,50,000. Copy of legal notice is annexed as Annexure C-6. The respondent in his reply has postponed the date of possession to March 2023. Copy of reply is annexed as Annexure C-7.
9. That respondent company is not in a position to handover the possession of the unit of the complainant and has failed to abide by the terms and conditions of the MOU.
10. Thus, aggrieved of all the above facts, the present complaint has been filed.

**C. RELIEF SOUGHT**

11. The complainant in this present complaint has sought relief to direct the respondent to pay the interest on the amount deposited from the due date of possession till actual realization of the possession, as per the provisions





of RERA Act. of possession along with delay interest on account of delay caused in handing over the possession.

12. Respondent be directed to pay compensation of ₹1,00,000/- for the mental, physical and financial harassment suffered by the complainants,

13. Respondent be directed to pay ₹55,000/- as litigation cost to the complainant.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 07.02.2023 pleading therein:

14. That the period of 18 months as mentioned in MOU was tentative and the same was not final.

15. Respondent entered into agreement and MOU with the complainant under bona fide intention to complete the development and construction of the said flat/project within time. However, the country was hit with the Covid pandemic in the month of March 2020, wherein the country was brought to a standstill and afterwards due to restrictions on construction by the local Authority and NGT, market fluctuations etc, the respondent was unable to carry on the construction activities. Therefore, there is no deliberate delay on the part of the respondent.

16. Authority vide resolution dated 02.08.2022 granted a special extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid



-19. Thus, respondent has been granted of extension of 9 months by the Hon'ble Authority.

17. Respondent on the request of the complainant has given an option of buying back the flat from the complainant and respondent has issued the cheques towards the satisfaction of the complainant. The Oriental Bank of Commerce was merged with PNB; However, cheque was issued by the respondent when there was no merger between the banks.

18. That the respondent is very hopeful to complete the construction in all respects and handover the possession of the flat to the complainant.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

19. During the oral arguments, both the parties reiterated the same facts as stated in writing. Learned counsel for the respondent, submitted that occupation certificate will be applied in next six months and possession will be offered to the complainant at the shortest possible time.



**F. OBSERVATIONS AND DECISION OF THE AUTHORITY**

20. In light of the background of the matter, Authority observes as follows:

i) Respondent has admitted the basic facts that MOU was executed between the parties on 19.05.2020 and against the total sale consideration, complainant has paid the entire amount till date.

ii) As per MOU signed between the parties, the project was proposed to be completed within 18 months which means possession was supposed to be delivered by the year 2021. However, possession of the flat has not been offered to the complainant till date.

iii) Respondent has taken the plea that the construction of the project has got delayed due to Covid 19 outbreak. The outbreak of Covid came out in March 2020 and the possession was to be given by the year 2021. Therefore, it is understandable that construction of the project got hampered due to the pandemic situation, in furtherance to which Authority has already granted an extension to the project on the ground of force majeure Covid-19.

However, respondent has not applied for the occupation certificate till date and there is no assurance when the project is going to be complete. The complainant booked a flat in the project of the respondent in the year 2020 and paid the entire amount in the year 2020



itself. However, complainant had heard nothing about the project till date and delay has already been caused of almost 2 years. Since, the complainant despite the delay on the part of the respondent in completing the project, is not intending to withdraw from the project and is seeking the relief of the possession of the flat along with interest prescribed. Therefore, considering the facts of the case, Authority directs the respondent to issue an offer of possession of the flat to the complainant after receiving the occupation certificate from the competent authority.

Further for the delay caused in handing over of possession, complainant is entitled for upfront interest from the deemed date of possession till the actual handing over of possession after obtaining the Occupation Certificate. Complainants are also entitled to receive each month's interest on the principal amount from the date of order i.e., from 27.04.2023 onwards till the handing over of possession after obtaining occupation certificate in terms of section 18 of the RERA Act read with Rule 15 of HRERA Rules, 2017.

As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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;*

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (NCLR) 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. 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., 27.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.
22. Therefore, respondent is directed to pay the upfront interest for the period of delay in handing over the possession from the deemed date of possession i.e., 19.11.2021 till the date of this order i.e., 27.04.2023. Further





respondent is liable to pay each month's interest from the date of order i.e., from 27.04.2023 onwards till the handing over of possession.

The details of the amount paid by the complainant and interest calculated on the amount is shown in table as below:

Sr. No.	COMPLAINT NO.	AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION	UPFRONT INTEREST CALCULATED BY AUTHORITY TILL 27.04.2023 (In Rs.)	FURTHER MONTHLY INTEREST (In Rs.)
1.	1808/2022	₹20,50,000/-	19.11.2021	₹3,15,503/-	₹18,029/-
2.	1843/2022	₹20,50,000/-	19.11.2021	₹3,15,303/-	₹18,029/-

23. Further, the complainant is seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the



quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

**G. DIRECTIONS OF THE AUTHORITY**

24. 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:

i) Authority directs the respondent to handover the possession of the flat to the complainant after receiving the Occupation Certificate from the Competent Authority.


ii) Authority further directs the respondent to pay the upfront interest of ₹3,15,503/- to the complainant and further pay monthly interest of ₹18,029/- till handing over of possession after obtaining the occupation certificate in complaint no. 1808 of 2022 and upfront interest of ₹3,15,503/- and further monthly interest of ₹18,029/- in complaint no. 1843 of 2022.

ii) 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.

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

  
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**DR GEETA RATHEE SINGH**  
**[MEMBER]**

  
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**NADIM AKHTAR**  
**[MEMBER]**