



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>5 of 2022</b>
<b>Date of filing:</b>	<b>06.01.2022</b>
<b>Date of first hearing:</b>	<b>15.02.2022</b>
<b>Date of decision:</b>	<b>03.08.2023</b>

Gaurav Garg

S/o Sh. Satish Garg

R/o House no. 253/5, Gandhi Nagar, Jind, Haryana

Now residing at Flat S-5, 3rd Floor, BSR Royal Enclave Apartment, 7th Cross,  
1st Main Road, Yelanahalli, Akshayanagar, Yelenahalli, Bangalore

...COMPLAINANT

VERSUS

RAS Developments Private Limited

Registered office 812- 812A, Chiranjiv Tower, 43, Nehru Place, New Delhi  
110019, now shifted to 203, 2nd Floor, Chiranjiv Tower, Nehru Place, New  
Delhi 110019.

...RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present:** Mr. Ritesh Agarwal, learned counsel for the complainant through video conference.

Mr. Shubhnit Hans, learned counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint was filed on 06.01.2022 by the complainant against the respondent company namely 'RAS DEVELOPMENTS PRIVATE LIMITED' under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '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 fulfill 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 unit booked by the complainant, the details of the sale consideration, the amount paid by the complainant and the details of the project are detailed in the following table:

Sr. No.	Particulars	Details
1.	Name of the project	Palm Residency, Sector 75-76, Faridabad



2.	Nature of the project	Group Housing Colony
3.	Name of the promoter	RAS Developments Private Limited
4.	RERA Registered/not registered	Not registered
5.	Date of booking	15.06.2012
6.	Flat No.	603- tower C2, 6 <sup>th</sup> floor
7.	Carpet Area	1240 Sq. Ft.
8.	Date of allotment	28.09.2012
9.	Date of flat buyer agreement (FBA)	28.09.2012
10.	Decmed date of possession	27.09.2015 (as per clause 2.2 of FBA)  2.2 That the developer shall endeavor to complete the construction work of the 'said unit' within a period of thirty six (36) months from the date hereof or the date of sanctioning of building plans or approval from Ministry of Environment/Department of fire fighting/local authorities, or any sanction by the competent authority, whichever is later, subject to allottee(s) having complied all terms of this agreement, fulfilled the formalities, documentations, etc and timely remitted all payments, installments and dues as &



		when demanded by developer. Thereafter, the developer is entitled for additional time required in applying and obtaining the Occupation Certificate in respect of the said unit to allottee(s).
11.	Total sale consideration	Rs. 36,33,560/- as per FBA.
12.	Amount paid by the complainant	Rs. 37,55,099/- (as per ledger annexed as Annexure C-5 )

#### B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That the complainant had booked a flat in the Group Housing Colony of the respondent named 'Palm Residency', Sector 75-76, Faridabad by paying a booking amount of Rs. 5,00,000/- vide cheque no. 391163 dated 15.06.2012.
4. That the complainant was allotted the Flat no. 603 in tower C2 on 6<sup>th</sup> floor measuring area 1240 sq. ft. in the said project of the respondent.
5. That, a Flat Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 28.09.2012 annexed as **ANNEXURE C-2** with the complaint file. As per Clause 2.2 of the FBA, the assured time period for the possession was 36 months from the date of execution of FBA or sanctioning of building plans or approval from Ministry of Environment/Department of Fire Fighting/Local





Authorities, or any sanction by the competent authority, whichever is later i.e., 27.09.2015 but the respondent had failed to complete and develop the said flat within a stipulated time period as per the said agreement.

6. That the respondent sent various demand letters for the remaining outstanding payment and the complainant paid the same as per the demands without committing a single default. Total sale consideration agreed between the complainant and respondent for the said flat was Rs.36,33,560/- against which the complainant has paid an entire consideration of Rs. 37,55,099/- to the respondent by 14.01.2021 as per the demands of the respondent and the same is reflected in the customer ledger issued by the respondent to the complainant. The copy of the said customer ledger sent by respondent has been annexed as **ANNEXURE C-5** with the complaint file.
7. That the complainant made several requests to respondent to furnish information of the said project but the respondent has not informed the complainant regarding the status of the project and has been dilly-dallying the matter on one pretext or the other. The complainant had cleared all the outstanding payments on 14.01.2021 when the respondent issued him no dues certificate dated 14.01.2021 but the possession as well as the keys of the said flat were never handed over to the complainant as the payments were made through online



transaction. The copy of the said no dues certificate issued by the respondents on 14.01.2021 is attached as **ANNEXURE C-4** with the complaint file.

8. That on 02.04.2021 when the complainant went to take the possession of the said flat he found that someone else was using the said flat and were doing parties and other stuff without the knowledge of the complainant. It was further found that the condition of the flat was not good and somewhere the floor marble was broken and also the toilet sheets were badly damaged. The complainant wrote a detailed email on 13.04.2021 to the officials of the respondent in which it was specifically requested to the respondents to initiate the process to handing over the possession to the complainant so that complainant could start the wood work after taking care of the abovementioned issue as the complainant wanted to explore other opportunities such as lending the said flat on rent or for sale. The copy of the email dated 13.04.2021 written by the complainant to the respondent is attached as **ANNEXURE C-6** with the complaint file.
9. Apart from emailing the complainant had also called the concerned officials of the respondent i.e. Mr. Chandan Singh over call but he could not get any satisfactory answer from him. On 02.12.2021, the complainant once again requested the respondent to give him the possession of the said flat along with the keys within 10 days of the



receipt of the letter but all in vain. Thus, the complainant got depressed in all the ways and faced difficulty mental/financial harassment as well. Hence, the present complaint has been filed seeking for possession of the said flat as well as execution of conveyance deed in the favour of complainant along with the delayed compensation for delay in handing over the possession of the said flat.

### **C. RELIEF SOUGHT**

10. In view of the facts mentioned above the complainant pressed in the following relief :-

- (i) Direct the Respondent to deliver legal and actual physical possession of Flat No. C2-603 to the complainant and to execute a conveyance deed in the favour of the complainant after obtaining necessary approvals from the statutory authorities.
- (ii) Direct Respondent to compensate the complainant for delay in handing over of the possession of the plot in questions as per Real Estate (Regulation & Development) Act 2016 alongwith interest on payment of any amount paid by the complainants to the Respondents.
- (iii) Or any other relief which this Hon'ble Authority deems fit in view of the present facts and circumstances.



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

Learned counsel for the respondent filed reply on 10.02.2022 pleading therein:

11. That the present complaint is not maintainable as respondent has complied with its part of obligations in accordance with the terms of the flat buyer agreement. However delay, if any in completion of the project was beyond the control of the respondent as various allottees/applicants in the project were not making payments timely and there is no deliberate or wilful delay on part of the respondent in completion of the said project.
12. That the respondent further argued that no delay has been caused by the respondent, however, despite no fault of on its part, respondent has also adjusted delayed penalty at the rate of Rs.5 per square feet in terms of the FBA i.e. Rs.4,23,185 to the complainant for the period from 27.09.2015 to 01.04.2019 in terms of the agreement dated 28.09.2012.
13. That the respondent has stated that the present complaint is based on assumptions and presumptions only and is not tenable in the eyes of law and is not maintainable. Hence, the present complaint is liable to be dismissed keeping in view the facts and submissions made by the respondent in his reply and the fact that respondent has successfully





completed the project/unit and has obtained required occupation certificate on 02.04.2019 attached as Annexure R-3 with the reply file.

14. That the respondent contended that the total sale consideration of the said flat amounts to Rs. 38,95,560 excluding other charges and taxes.

15. That the respondent has also stated that they had issued offer of possession of the said flat along with demand for due to the complainant vide its letter dated 04.04.2019. The copy of said letter dated 04.04.2019 is attached as Annexure R-4 with the reply file.

16. That the respondent has already been handed over possession of the said flat to the complainant on 14.02.2021 along with the keys of the same therefore the complaint is liable to be dismissed.

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

17. During oral arguments learned counsel for the complainant and respondents reiterated the respective arguments as stated in their written pleadings. Learned counsel for the complainant and respondent in addition to the written pleadings have submitted oral arguments as follows :-

Mr. Ritesh Agarwal, Id. counsel for the complainant submitted before the Authority that the case of the complainant is that he had booked a flat in the project of respondent namely "Palms Residency" by making a payment of Rs. 5 lac on 15.06.2012. The complainant



was allotted flat No. 603 in tower C2 on 6<sup>th</sup> floor and admeasuring area 1240 sq. ft. The flat buyer agreement was executed between the parties on 28.09.2012. As per clause 2.2 of FBA possession of the flat was to be handed over within 36 months from the date of FBA, therefore the deemed date of handing over the possession was 27.09.2015 but the respondent failed to do so. The total sale consideration of the flat is Rs. 36,33,560/- including EDC, IDC, IFMS, PLC and other statutory charges and complainant has paid entire consideration as and when demanded by the respondent and obtained no due certificate on 14.01.2021. The complainant has been requesting the respondent since 2015 i.e. when the physical possession of the flat was to be handed over to the complainant but was of no use as the respondent did not clearly responded to the queries of the complainant. The respondents had been issuing various demands letters which were duly honored by the complainant and the payments were made. On 04.04.2019 when the alleged offer for possession cum demand letter was sent to the complainant the complainant got shocked to see the exorbitant demands of payments asked by the respondent vide the said letter dated 04.04.2019. Then thereafter the detailed discussions and corrections were happening between the parties and then the agreed amount was deposited by complainant on 14.01.2021. Upon receiving the payment no due certificate dated



14.01.2021 was issued by respondent but the physical possession and the keys of the said flat were not handed over to the complainant. On 02.04.2021, the complainant went to take the physical possession of the flat and found that someone was illegally using the said flat and was doing parties etc. in the said flat, also the condition of the flat was not good as the floor tiles were broken the toilet sheets were also broken, the complainant immediately brought this fact in the knowledge of the respondent then the complainant was asked to send the grievance through email and thereafter the complainant wrote the detailed email dated 13.04.2021 to the respondent and its officials but received no response from them, so much the officers of the respondent had also refused to answer the calls of the complainant. Thereafter the complainant again wrote on 02.12.2021 to the respondent to kindly give the physical possession of the said flat along with the keys but all in vain. Therefore, feeling aggrieved with conduct of respondent complainant is pressing for the possession of the said flat along with compensation for delay in possession along with interest.

Mr. Shubhnit Hans, Id. counsel that the respondent had submitted that there is no cause of action for the complainant to file the present complaint as the complaint is based upon assumptions and presumptions of the complainant and has only been filed to harass the





respondent for reasons best known to him. The respondent has not delayed the project and has fulfilled all his part of the obligations as mentioned in the FBA and the delay if any which has been caused was beyond the control of the respondent. In order to compensate for the delay possession of the flat the respondent has adjusted delayed penalty at the rate of Rs. 5 per square feet in terms of the agreement i.e. Rs. 4,23,185/- to the complainant for the period from 27.09.2015 to 01.04.2019 against the remaining dues of complainant which the complainant has accepted without any protest. He further apprised Authority that the respondent received the occupation certificate on 02.04.2019 and issued offer of possession to the complainant on 04.04.2019 along with demand letter (Annexure R-4) therefore there is no delay on the part of the respondent.

18. Today, Id. Counsel for the complainant has pointed out that the total sale consideration of the flat as mentioned in the flat buyer agreement dated 28.09.2012 was Rs. 36,33,560/- including EDC, IDC, PLC and other statutory charges against which the complainant has paid entire consideration amounting to Rs. 37,55,099/- which is inadvertently mentioned as Rs.39,15,560/-. The payment of Rs.37,55,099/- by complainant can also be clearly depicted from statement of account annexed by complainant as Annexure C-5. However, the letter of offer of possession, physical possession along with keys were handed





over to the complainant after a delay of more than 7 years from the deemed date of possession only after the intervention of the Authority on **10.02.2023**.

**F. ISSUES FOR ADJUDICATION**

19. That since one of the prayer made in the complaint with respect to handing over of actual possession to the complainant has already been met with and therefore the issues which requires the adjudication by this Authority are as under:-

- a. Whether the complainant is entitled for delay possession interest for causing delay in handing over the possession of the said flat in terms of the provisions of Act of 2016?
- b. Whether the complainant is entitled for execution of conveyance deed in his favour.

**G. FINDINGS AND OBSERVATIONS OF THE AUHTORITY**

20. Authority has gone through the contentions of both the parties. In the light of the background of the matter as ruptured in this order and also the arguments submitted by the parties, the Authority observed as follows :-

21. There is no dispute between the parties with regard to the facts that the complainant had booked unit in the project of the respondent namely "Palm Residency" by making payment of Rs.5 lac on 15.06.2012 to the respondent and thereafter a flat No. 603 in Tower



C2 on 6<sup>th</sup> floor admeasuring area 1240 square feet was allotted to the complainant.

22. It is not disputed by any of the parties that the flat buyer agreement was executed between both the parties on 28.09.2012. The deemed date of handing over the possession was 27.09.2015 as per Clause 2.2 of FBA have already been admitted by the respondent by pleading and stating specifically about the adjustment of alleged delayed penalty at the rate of Rs. 5 per square feet in terms of the agreement i.e. Rs. 4,23,185/- to the complainant for the period from deemed date of possession till date of receiving occupation certificate i.e., 27.09.2015 to 01.04.2019.
23. The fact regarding the execution of the flat buyer agreement is admitted by the respondent, thus said flat buyer agreement is binding upon both the parties. As such, the respondent was under an obligation to hand over the possession on the deemed date of possession i.e., 27.09.2015 as per the agreement, however, in the present case, the respondent has failed to offer possession on the deemed date of possession, much less the actual physical possession of the said flat was offered and handed over to the complainant on 10.02.2023 and that too after the intervention of the Authority. The said fact has been recorded by Authority in its order dated



02.05.2023. The relevant part of said order has been reproduced for ready reference:-

*'Today, learned counsel for the complainant submitted that offer of possession has been given to the complainant on 10.02.2023 and keys of the flat have been handed over to him. He further submitted that as per the agreement, possession of the unit was supposed to be handed over by 27.09.2015. Complainant has paid the entire amount of booked unit to the respondent; however, respondent has not given the possession within the specified period as per the agreement. Therefore, complainant is entitled for relief of delay interest charges on account of delay caused in handing over the possession'.*

24. That one of the averment of the respondent is that there was no ground for the complainant to file the complaint as physical possession and the keys were handed over to the complainant at the time of issuance of no dues certificate i.e. on 14.01.2021 whereas the respondent has not placed on record anything in support of the said claim that the physical possession of the flat along with the keys was ever handed over to the complainant on 14.01.2021. Moreover the complainant had written various communications to the respondent some of them dated 13.04.2021 and 02.12.2021 have been annexed as Annexure C-6 and C-7 with the complaint file in which he has been specifically requesting respondent to hand over the physical possession of the flat along with the keys. So, much so that the complainant wrote a detailed email of the incident when he went to





take the possession of the flat on 02.04.2021 and found that someone else was using the said flat allotted to the complainant illegally, therefore, the condition of the flat was not up to the mark.

In view of the aforesaid fact that someone else was occupying and enjoying the flat allotted to the complainants, the argument of the respondent that possession was handed over to the complainant on 14.01.2021 cannot be accepted, especially when the physical possession along with the keys were handed over to the complainant vide offer of possession letter dated 10.02.2023 (annexed at page no. 5 of additional documents submitted by respondent on 28.04.2023) and that too **after the intervention of this Authority**, meaning thereby that the respondent had the physical possession along with the keys with them all this time. The complainant had approached the Authority for seeking physical possession of the flat and compensation for delay in possession of the flat as he was left with no other remedy to get the physical possession of his flat which was assured to be delivered by the respondent by 27.09.2015. The present complaint filed by the complainant is certainly maintainable and thus the objection raised by the respondent regarding maintainability of the present petition is rejected.

25. Further, it has been contended by the respondent that the total sale consideration of the flat in question was Rs.36, 33,560/- including





PLC, development charges, external development charges, infrastructure development charges/ elite charges but excluding other charges. The total sale consideration including all charges to be paid by the complainant was Rs.38,95,560/-. On this, the Id. counsel for the complainant has stated that against an amount of Rs.38,95,560/- an amount of Rs.37,55,099/- was paid towards the sale consideration of the allotted flat including all other charges. Further, respondent has not denied the factum of the complete payment made by the complainant on 14.01.2021 for which no dues certificate dated 14.01.2021 has also been issued by respondent.

In this regard, on perusal of the document available on record Authority observed that the statements on account/ customer ledger of respondent showing the internal account of the respondent which is annexed by the complainant as Annexure C-5 reflects that the complainant has paid Rs. 37,55,099/- towards the said flat. The said statement of account is a computer generated statement wherein it has been specifically mentioned that the complainant has paid Rs. 37,55,099/- to the respondent. The fact that the respondent issued a 'No due certificate' on 14.01.2001 itself settles the issue that the respondent was satisfied with the payment received from the complainant against the flat and then only respondent has issued the



no dues certificate. Further, there is no contention on the part of the respondent any amount remains payable by the complainant nor is it the case of the complainant that excess amount have been charged over and above the agreed amount and same should be refunded.

26. The Authority observed that the respondent has failed to show any proof as to how and when the physical possession was handed over to the complainant in support of his argument. Moreover, it is further evident from the record that when the complainant had requested to the respondent for issuance of the physical possession along with the keys of the said flat on different dates, the respondent never rebutted those emails and letters that the possession has already been delivered to the complainant. Thus, it clearly shows that though the no dues certificate was issued to the complainant on 14.01.2021 but not the possession and the keys. Further, the fact that the respondent has issued offer of possession to the complainant on 10.02.2023 after the intervention of this Hon'ble authority is also not disputed.

27. The contention of the respondent that he has not delayed in the handing over the possession of the said flat to the complainant as he had after getting the occupation certificate on 01.04.2019 had offered the possession of the said flat to the complainant and hence it is not the fault of the respondent for delay in possession and the respondent



has adjusted Rs. 4,23,185 i.e. @ Rs. 5 per sq. ft. in view of delay possession of the said flat. The Ld. Counsel for the complainant has controverted this fact on the ground that the respondent is blowing both hot and cold in the same breath as one side the respondent says that he has complied with all the obligations and has not delayed in offering the physical possession of the above said flat and cannot be penalized as such and on the other side the respondent submits of he has in accordance in terms of the FBA has adjusted in amount of Rs. 4,23,185 i.e. @ Rs. 5 per sq. ft. However, when the Authority asked during hearing and vide its order dated 02.05.2023 as to how the said amount was calculated and adjusted in the customer ledger the respondent could not give any satisfactory answer. The relevant part of said order where such clarifications were asked by Authority has been reproduced for ready reference:-

*Therefore, in order to calculate the delay interest on account of delay caused in handing over the possession, Authority requires the clarifications from the respondent as how he has calculated the amount of Rs.4,23,185/- as delay penalty. Hence, respondent is directed to submit his calculations along with the proof of payments made to the complainant on account of delay penalty.*

However, respondent has failed to place on record its calculations and to give any clarification as to how the said amount was calculated and adjusted in the customer ledger. However, during the course of





hearing, Id. counsel for the complainant has brought the attention of this Authority towards the customer ledger issued by the respondent to the complainant whereby the respondent has adjusted the alleged amount of delay compensation in possession that is as under:

1. Basic: Rs.1,16,499/- (including GST)
2. Power back-up: Rs.50,000/-
3. Electric meter: Rs.20,000/-
4. FFC and ECC: Rs.75,000/-
5. Interest free maintenance security (IFMS) : Rs. 62,000/-
6. Value Added Tax Rs.1,42,486/-.

**Total: Rs.4,65,985/-**

It is further pointed out by the Id. counsel for the complainant that as per the prevailing law that the value added tax was to be refunded to the allottees by the builders but the respondent has erroneously included the amount of Rs. 1,42,486/- towards adjustment in penalty whereas this should have been refunded to the complainant. Therefore after deducting Rs.1,42,486/- from Rs.4,65,985/- the actual adjustment made by the respondent towards the delay payment is **Rs.3,23,499/-**. That the counsel for the complainant has further stated that from the above-mentioned calculation it is clear that the respondent has not given any effective deduction towards the delay interest to the





complainant and the amount alleged by respondent as adjustment is vague and unclear.

Moreover, the possession of the said flat has been given to the complainant after the filing and intervention of the Authority on 10.02.2023 in the present complaint. The respondent has not been able to rebut that fact therefore as the possession has been admitted given during the course of the proceedings as stated in interim order dated 02.05.2023 of the Authority as reproduced above in Para 23.

28. It is further stated by the respondent that he has offered possession cum demand letter of the flat on 04.04.2019 (annexure R4) to the complainant but the complainant has controverted that fact on the ground that the said letter had an exorbitant amount which was based upon wrong calculations and the said fact was never disputed by respondent. Thereafter, after repeated discussion between both the parties, the amount was finally settled and no dues certificate was issued to the complainant on 14.01.2021 nevertheless the possession was never technically offered to the complainant after that, despite numerous requests and communications by complainant to respondent to handover physical possession to complainant. It is only on 10.02.2023 the offer of possession was offered to the complainant. Therefore, it is held that since the valid offer of possession was made on 10.02.2023 by the respondent therefore the complainant is entitled



to claim the compensation for delay in possession from 27.09.2015 till 10.02.2023.

29. In view of above, Authority observed that though respondent has offered possession to complainant vide letter dated 04.04.2019 but the said letter was objected by the complainant on the ground that said offer cum demand letter dated 04.04.2019 was accompanied with exorbitant demand which was wrong calculations. Neither of the party has annexed the demand made by the respondent along with the offer letter in their pleadings, however, respondent has neither disputed the said fact of exorbitant demand in offer letter with wrong calculations nor given any justification with respect to said fact alleged by the complainant. Rather complainant has given explanation that as soon he received the offer cum demand letter, he was shocked to see the exorbitant demand made by the respondent and he immediately communicated the respondent about the illegal demands and has made discussions repeatedly with respondent to settle the amount. Thereafter, the amount was finally settled between the parties and in pursuance of settled amount paid by the complainant on 14.01.2021, no dues certificate was issued by the respondent on 14.01.2021 stating that there are no further dues pending in the name of complainant except the maintenance, IFMS, registration charges, conveyance deed charges as demanded by respondent company.



30. It is a matter of fact that after settling the accounts when on 02.04.2021, the complainant went to take the physical possession of the flat, he found that someone was illegally using the said flat. As alleged by the complainant, the condition of the flat was not good as the floor tiles were broken the toilet sheets were also broken. The complainant immediately brought this fact in the knowledge of the respondent then the complainant was asked to send the grievance through email and thereafter the complainant wrote the detailed email dated 13.04.2021 to the respondent and its officials but received no response from them so much so the officers of the respondent refused to answer the calls of the complainant. Thereafter the complainant again wrote to the respondent to kindly give the physical possession of the said flat along with the keys but all in vain. This shows that respondent has failed to fulfil his obligation to deliver the possession despite of receiving entire consideration. The conduct of respondent has left the complainant with no other option than to approach this Authority for the grant of relief of actual physical possession of the allotted flat along with delay possession interest and thereafter respondent has made a fresh offer of possession vide offer of possession letter dated 10.02.2023 and the physical possession was actually handed over to complainant on 10.02.2023 after the intervention of the Authority. For the foregoing reasons, Authority





considers that the offer of possession made on 04.04.2019 is totally illegal and bad in law because of the facts undisputed by the respondent as and when alleged by the complainant, firstly the flat was illegally in physical possession of other person; secondly it has been accompanied with illegal demands which were not accepted by the complainant and thereafter settled between the parties after repeated discussions, and thirdly flat is not habitable as alleged by complainant and still need repair to make it habitable.

31. Since the valid offer of possession has been made on 10.02.2023 after intervention of the Authority, therefore, complainant is entitled to delay possession interest from the deemed date for delivery of possession i.e. 27.09.2015 till the date on which the fresh offer of possession was made to the complainant along the handing over of possession i.e., on 10.02.2023 after deducting the amount of Rs. Rs.3,23,499/- which the respondent has adjusted in view of delay possession of the said flat.

32. The provision of delayed possession charges till the handing over of the possession has been provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:

*“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the*



*promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

Thus, Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate, as may be prescribed and it has been prescribed under Rule 15 of the Rules. Rule 15 has been reproduced as under;

*“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section-19](1) For the purpose of proviso to section 12; section 18, and subsections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:  
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.*

33. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the HIRERA Rules, 2017 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.

34. 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. 03.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

35. The definition of term 'interest' is defined under Section 2(za) 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;*

36. Authority has got delay interest calculated from its account branch.

The details of amounts paid by the complainants and delay interest calculated on said amounts are shown in the following table: -

Amount paid by complainants	Upfront delay interest calculated by Authority till date of possession i.e., 10.02.2023 @ 10.75% p.a rate of interest.
Rs. 37,55,099/-	Rs. 29,42,398/-

Thus, the upfront delay interest as calculated by Authority till date of possession i.e., 10.02.2023 @ 10.75% p.a rate of interest comes out to





be Rs. 29,42,398/-. However, the said amount is subject to the deduction of the amount that the respondent has already adjusted in the custom ledger issued by the respondent in view of delay possession interest. As per the custom ledger issued by the respondent as assessed by the account branch of the Authority, the amount adjusted by the respondent in view of delay possession charges comes out to be Rs.4,69,985/-. Out of the said amount, the amount adjusted towards value added tax i.e., Rs. 1,42,486/- should have been refunded to the complainant as per the prevailing law but the respondent has erroneously included the amount of Rs. 1,42,486/- towards adjustment in penalty, therefore this amount of Rs. 1,42,486/- cannot be considered as the adjusted penalty by the respondent . Therefore after deducting Rs.1,42,486/- from Rs.4,65,985/- the actual adjustment made by the respondent towards the delay payment is **Rs.3,23,499/-**. In view of the above calculations, upfront delay possession payable to complainant by respondent after adjustment comes out to be **Rs. 26,18,899/-** (i.e., Rs. 29,42,398/- Rs.3,23,499/-).

37.Regarding conveyance deed, Authority observed that it is an undisputable fact that complainant had purchased the apartment in a lawful manner by duly executing flat buyer agreements. The agreement in was executed on 28.09.2012 for purchase of flat No.603 6<sup>th</sup> floor, Tower C-2 in the project. It is also undisputed that



complainant has paid full consideration amount. After receipt of the entire payment, possession was handed over to complainant on 10.02.2023. The complainants therefore became lawful owner in lawful possession of lawfully constructed flat. Complainant contends that he is entitled to enjoy his lawful possession without any obstruction.

Authority observes that the law of the land is that once full consideration has been paid, property has received occupation certificate from the State Government authorities, and actual physical possession is handed over in a lawful manner, the property in the apartment gets vested in favour of buyers. The allottee gets its legal interest at the same moment of discharging his part of obligations. Thereafter, execution of conveyance deed remains a mere formality for updating the records and signifying to the public at large regarding perfection of title. Non- execution of conveyance deed will not in any way adversely affect the rights of allottee. Right of allottee to get conveyance deed executed crystallises irrevocably at the same moment when he pays full consideration and obtains lawful possession. Delay caused by promoter in executing conveyance deed will not render imperfect an otherwise perfect title.

In the considered view of this Authority ownership of the flat has already got vested in the complaint. This prayer for execution of



conveyance deed was their right under general law of the land, now made unambiguously clear by Section 17 of the RERA Act.

Thus, Authority is of the considered view that there is no impediment on execution of conveyance deed in favour of an allottee. The complainant has paid full consideration. Possession has also been delivered. Now, at this stage execution of conveyance deed is nothing but updating of records in respect of transfer of property having already taken place. Thus, the respondent-promoter is now obligated/duty bound u/s 17 of the RERA Act, 2016 to execute a registered conveyance deed in favour of the complainant-allottee.

#### **H. DIRECTION OF THE AUTHORITY**

36. 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) Respondent is directed to pay the complainants upfront amount of **Rs.26,18,899/-**. Respondent shall pay amount specified to complainant within 90 days of uploading this order on the web portal of the Authority. as provided in Rule 16 of Haryana Real Estate (Regulation &





Development) Rules, 2017 failing which legal consequences would follow.

(ii) Respondent is directed to execute conveyance deed of allotted flat in favour of complainant within 45 days of uploading of this order, and the complainant shall pay the required stamp duty/ registration charges.

37. **Disposed of** in above terms. Order be uploaded on the website and files be consigned to record room after compliance.



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



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