

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 24.08.2022 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 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	"Espania Floor KEF", Main NH-1, Kamaspur, Sonipat
2.	RERA registered/not registered	HRERA-PKL-SNP-161-2019 dated 15.11.2019
3.	DTCP License no.	1065-1068 of 2006
	Licensed area	12.54 acres
4.	Unit no.	EF-54-FF



5	Unit area	1224 sq. ft. or 113.71 sq. mtrs
6.	Date of booking	16.09.2011
7.	Date of builder buyer agreement	01.03.2012
8.	Due date of offer of possession (30 months)	01.09.2014
9.	Possession clause Clause 28	<p>“Clause 28</p> <p>.....However, if the possession of the floor is delayed beyond the stipulated period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the total super area of the floor. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the floor.”</p>
10.	Total sale consideration	₹ 26,19,709/-
11.	Amount paid by complainants	<p>₹ 32,97,138/-</p> <p>Complainants in their pleadings has mentioned paid amount as Rs 32,96,980/-. Vide order dated 29.08.2023 complainants were directed to place on record receipts/proof of paid amounts as same was not available in file. In</p>

		compliance of it, complainants has filed a statement of account for total amount of Rs 32,97,138/- in registry on 13.10.2023. Same amount is admitted by respondent in statement of account attached as Annexure R-3 with reply. Therefore, paid amount is taken as Rs 32,97,138/- for passing of this order.
12.	Occupation Certificate	Not received till date.

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants had booked a floor in the project namely 'Espania Floors', Main NH-1, Kamaspur, Sonipat of the respondent by paying Rs 3,00,000/- on 16.09.2011. Thereafter, Builder buyer agreement for unit no. EF-54-FF having area 1224 sq. ft. was executed between the parties on 01.03.2012. As per clause 28 of it, possession was supposed to be delivered upto 01.09.2014. Complainant had paid an amount of Rs 32,97,138/- against the total sale consideration of Rs 26,19,709/-.
4. That respondent had offered the possession on 08.01.2018 alongwith some demands. Complainants made all payments except stamp duty charges. Copy of offer of possession is annexed as Annexure C-4. Further, respondent directed the complainant to obtain the NOC



before taking possession. Accordingly, complainants got issued NOC on 12.02.2018 after making all payments except stamp duty charges. Copy of NOC is annexed as Annexure C-5.

5. That at time of registration of sale deed, complainants demanded the occupation certificate/completion certificate of the project but the respondent failed to provide the same and sought some time to provide it. Further, email was sent to respondent in March,2022 regarding the delay in possession, execution of sale deed and not providing the completion certificate and occupation certificate. In said email issued related to the basic and necessary amenities under the project were also raised but respondent has not sent any reply to it till date.
6. That till 31.03.2014, complainants have already paid 100% of the payment to the respondent but the actual handover of possession is yet to be given alongwith occupation certificate and completion certificate. Moreover, complainants are still unsure of the fact that whether requisite permissions from competent authorities are in place or not which further makes the previous offer of possession defective.
7. That there is an extraordinary delay of almost 8 years considering the date of actual offer of possession and the respondent could not answer the queries of complainants so far and in unable to handover the possession of the unit/floor till date. Therefore, complainants are left



with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEFS SOUGHT

8. Complainants in their complaint have sought following reliefs:
 - I. The complainants pray for interest on the amount paid i.e Rs. 32,96,980/- (correct amount is Rs 32,97,138/-) to the respondent against the booking of Floor in project so far till the actual handing over of possession handover with CC and OC.
 - II. The complainants further pray that the conveyance deed of said Floor in question may also be directed by this Hon'ble Authority to get it done by the respondent.
 - III. The complainants further pray indulgence of this Hon'ble forum/Authority in settlement of accounts with respondent, if any pending, in every possible manner since total 100% amount is already paid.
 - IV. Also further the authority must see no illegal charges get levied on complainants during possession handover of villa and execution of conveyance deed. The Villa may kindly be directed to be given by respondent complete in all respects.
 - V. Any other relief, which this authority may deem fit in the present circumstances may also be awarded to the complainants.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 20.12.2022 pleading therein:

9. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Espania Floor, NH-1, Kamaspur, Sonipat, Haryana. Said project is registered with the Ld. Authority.
10. That when the respondent Company commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent Company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
11. That the builder buyer agreement between the complainant and respondent has been executed on 09.02.2012 which is much prior from the date when the RERA Act, 2016 came into existence. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.
12. That the respondent had applied for grant of occupation certificate vide its letter dated 12.09.2016. Due to some unforeseen circumstances, the department had not granted the Occupation



Certificate and accordingly, respondent company had applied the Occupation Certificate afresh vide letter dated 17.02.2022. Copy of letter dated 17.02.2022 is annexed as Annexure R-2. It is the endeavor of respondent to obtain the same at earliest.

13. That complainant herein is an investor and accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.
14. That possession has already been offered to complainants on 01.08.2018 and complainants had duly accepted the possession vide an undertaking dated 12.02.2018. However, it is the complainants who are not coming forward to clear the pending dues and take over the possession of the unit.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANTS AND RESPONDENT

15. During oral arguments learned counsel for the complainant insisted upon possession of booked unit alongwith delay interest stating that complainants had already paid 100% of sale consideration except stamp duty charges. Further, he objected to the increase in area from 1224 sq ft to 1879 sq ft stating that said increase has not been justified by respondent till date. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further stated that application for grant of



occupation certificate is still pending with the DTCP. It is the complainants who are at fault by not coming forward to accept actual possession of the floor even after signing of NOC dated 12.02.2018. Moreover, respondent has already filed a fresh application for grant of occupation certificate on 17.02.2022 and it is expected to be received soon.

F. ISSUES FOR ADJUDICATION

16. Whether the complainants are entitled to possession of unit in question alongwith delay interest in terms of Section 18 of Act of 2016?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer



agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in *complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd* decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021**, it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-



going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint and objection raised by the respondent regarding maintainability of the present complaint is rejected.

G.II Objections raised by the respondent stating that complainants herein are an investor and have invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.

The complainants herein are the allottees/homebuyers who have made a substantial investment from their hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit within 3-4 years of allotment but their bonafide belief stood shaken when the promoter failed to offer a valid possession of the booked unit till date without any reasonable cause. It is after an inordinate delay in handing over of possession that complainant have approached this Authority for seeking possession of unit alongwith delay interest in terms of provisions of RERA Act,2016 being allottees of respondent-promoter. As per




definition of allottee provided in clause 2(d) of RERA Act,2016, present complainants are duly covered under it and are entitled to file present complaint for seeking the relief claimed by them. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

“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”.

Complainants have been allotted floor in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the builder buyer agreement dated 01.03.2012. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainants herein are investors does not hold merit and same is rejected.

G.III Objection regarding retrospective application of provisions of RERA Act,2016.

Respondent in its reply has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled M/s Newtech Promoters & Developers Pvt.



Ltd. vs. State of UP & Ors. Etc. (supra), wherein the Hon Apex Court has held as under:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest.”

“53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their



responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

17. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the



arguments submitted by both the parties, Authority observes as follows:

(i) Admittedly, complainants in this case had purchased the booking rights qua the floor in question in the project of the respondent in the year 2011 against which an amount of ₹ 32,97,138/- already stands paid to the respondent. Out of said paid amount, last payment of Rs 1,24,000/- was made to respondent on 06.03.2018 by the complainants which implies that respondent is in receipt of total paid amount since year 2018 whereas fact remains that no valid offer of possession of the booked unit has been given to the complainants till date.

(ii) In the written statement submitted by the respondent, it has been admitted that actual handover of possession of the booked unit has not been taken by the complainants. With respect to status of handing over of possession, it is submitted that the respondent had applied for grant of occupation certificate vide letter dated 17.02.2022 to Department of Town and Country Planning with respect to the project in question but the same is awaited. In the meantime, offer of possession was issued by the respondent to complainants on 08.01.2018 and complainants under the apprehension of losing their hard earned money accepted the offer of possession issued by the



respondent and deposited a further payment of ₹ 6,42,175/- on 20.01.2018 and ₹ 1,24,000/- 06.03.2018 to the respondent as full and final payment for taking possession of floor. An NOC for handing over of possession was issued to the complainants on 12.02.2018 wherein is it stated that *"In reference to above, we hereby certify that all dues towards offer of possession and final statement issued dated 06.01.2018 have been cleared except stamp duty. We are pleased to your good self to give the possession of the subject unit"*. Though respondent in its reply has submitted that complainants are at fault in not taking possession of the unit after signing of NOC dated 12.02.2018, however, respondent has only attached a copy of NOC for handing over of possession. No possession certificate, issued by promoter towards handing over of actual physical possession has been attached by the respondent. The complainants have denied accepting the actual possession or signing any possession certificate, which shows that the complainants have not taken the actual physical possession. Complainants had invested their hard earned money in the project with hopes of timely delivery of possession. However, possession of the floor was offered to the complainants after a delay of more than four years. Fact remains that respondent is yet to receive occupation



certificate, meaning thereby that a valid possession is yet to be offered to the complainants. In respect of issue of increased area, it is observed that any increase in area is not valid/justified until and unless same is validated through receipt of occupation certificate.

(iii) Authority observes that the builder buyer agreement was executed between the parties on 01.03.2012 and as per terms of clause 28 of it, the possession was to be delivered upto 01.09.2014. Fact remains that valid offer of possession has not been offered to complainants till date for the reason that project has not received occupation certificate from the Town and Country Planning Department, Haryana which stands applied on 17.02.2022. In present situation, respondent failed to honour its contractual obligations to deliver possession within the stipulated time. Complainants herein are insisting upon possession of booked unit alongwith interest for the delay caused.

(iv) In the present complaint, complainants intends to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

had

“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”.

(v) 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;

(vi) Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 27.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

(vii) 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 (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”.

18. The Authority observes that the respondent has severely misused its dominant position. Deemed date of possession in terms of builder buyer agreement is 01.09.2014. Now, even after lapse of about more than 9 years respondent is not able to offer valid and legal possession to the complainants. Complainants however, are interested in getting the possession of the booked unit. They do not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the unit the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any valid offer of possession to the complainants till date nor has obtained the completion certificate of the project in question. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date, i.e., 01.09.2014 to the date on which a valid offer is sent to them after obtaining occupation certificate.



19. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order i.e. 27.05.2024 at the rate of 10.85% p.a. as per detail given in the table below:

Complainants claims to have paid amount of Rs 32,96,980/- as per para 5 of complaint file. However, as per statement of account dated 05.02.2020 filed by complainants in registry on 13.10.2023, total paid amount is Rs 32,97,138/- and it is taken as final amount for calculations of interest.

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 27.05.2024
1.	₹ 22,63,198/-	01.09.2014	23,93,003/-
2.	₹ 2,44,605/-	22.08.2015	2,32,822/-
3.	₹ 23,160/-	22.04.2017	17,852/-
4.	₹ 6,42,175/-	20.01.2018	4,42,872/-
5.	₹ 1,24,000/-	06.03.2018	83,857/-
	Total = ₹ 32,97,138/-		₹ 31,70,406/-
6.	Monthly interest		₹29,403 /-

20. Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 31,70,406/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 32,97,138/- monthly interest of Rs. 29,403/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. It is to mention here that complainants have already paid an amount of Rs 32,97,138/- and respondent in lieu of acceptance of it had

had

already issued NOC on 12.02.2018 which implies that complainants have cleared the outstanding dues towards sale consideration of floor. If in case, any justified amount remains recoverable from the complainants then the Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

21. Ld. counsel for complainants has neither argued nor pressed upon the reliefs claimed in clause III and IV of the reliefs sought.

I. DIRECTIONS OF THE AUTHORITY

22. Hence, the Authority hereby passes this order and issue 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 upfront delay interest of Rs. 31,70,406/- to the complainants towards delay already caused in handing over the valid and legal possession of the floor within 90 days from the date of this order. Further, on the entire paid amount of Rs. 32,97,138/- monthly interest of Rs. 29,403/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate. Respondent is further directed




to get conveyance deed executed in favour of complainants within 90 days of valid offer of possession being made to complainants.

(ii) Complainants will remain liable to pay balance consideration amount, if any amount remains recoverable towards total sale consideration of the floor, to the respondent at the time of possession offered to them.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.85% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

23. **Disposed of.** File be consigned to record room after uploading of order on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]