HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**775 of 2019**
Date of filing:	**14.03.2019**
Date of first hearing:	**18.04.2019**
Date of decision:	**21.11.2023**

Ajay Sharma, S/o Late Dr. Vishwa Mittar,
Resident of House No. 808,
Sector-2, Panchkula, Haryana.

....COMPLAINANT

VERSUS

Idyllic Resorts Private Ltd.
through its Managing Director,
having its registered office at Plot No.195,
Industrial Area, Phase-I, Panchkula, Haryana.

...RESPONDENT

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

Date of Hearing: **21.11.2023**

Present: Adv. Vivek Suri, counsel for complainant.

None for respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 14.03.2019 by the 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Panchkula Eco City, Sector-12, Panchkula, Extention Part-II, (near Barwala)
2.	Allotted unit	Plot No. E-331
3.	Area	347 sq. yards
4.	RERA registered/ not registered	Registered HRERA-PKL-PKL-65-2018
5.	Date of Allotment/ Payment Reminder	17.07.2012
6.	Deemed date of possession	As per clause 12, the company endeavoured to give the possession of

		the plot to the allottee on receipt of all instalments and the charges applicable on the plot. However, no such clause is there that specifically provides for the deemed date of possession.
7.	Basic sale price	Rs.77,76,964/-
8.	Amount paid by complainant	Rs.46,66,177/-
9.	Offer of possession	Not offered
10.	Completion Certificate	11.05.2023
11.	Final Demand letter	21.11.2014

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

3. In this case, the allottee Sh. Ajay Sharma applied for a plot in the project of respondent company vide application no.1003 and was allotted plot no. E-331 in Panchkula Eco City, Sector-12, Extention-II with plot size of 347 sq. yard. The total sale consideration of the plot was fixed at Rs.77,76,964/-, calculated @ Rs.19,000/- per sq. yrd which does not include preferential location charges and Rs.3,412/- per sq. yard as external developmental charges. It is submitted that the complainant made timely payments as demanded by the respondent from time to time between 19.01.2012 to 26.12.2014 of a total amount of Rs.46,66,177/-.

The receipts of the same are attached from page no.16-24 of complaint book.

4. That no plot buyer agreement was executed between the parties, though respondent sent the same on 20.10.2012 to complainant. It is submitted that the agreement contained various clauses which were not as per mutual understanding due to which it was not signed by complainant. For instance at the time of booking, it was not disclosed by the respondent that they would be charging interest free maintenance security of Rs.500/- per sq. yrd at the time of possession whereas the buyer agreement states so in condition no.4. Similarly, the condition no 6 was also disputed to be contrary because at the time of booking of the plot no such condition was ever notified and similarly condition no. 7 was also not communicated. In condition no. 9, it was stated by the respondent that in case they are unable to deliver the possession then the allottee would be entitled to the refund of the amount @ 9% per annum simple interest whereas if the complainant failed to make timely payment then respondent was entitled to charge the interest @ 18% compounded. Similarly, in condition no. 10, it has been enumerated that if the company after allotment is unable to deliver the possession of the plot to the allottee then the only responsibility and liability of the company would be to pay to the allottee the amount received by it till that day without any interest. Complainant asserts that respondent very cleverly omitted the clause of possession

time from the plot buyer agreement and when the complainant requested the respondent to incorporate the same in the agreement, it was flatly refused. Similarly, many other conditions were written in the buyer's agreement which were not acceptable and this was the reason that the agreement was not signed. Moreover, it is submitted that it has been laid by various judicial pronouncements that the buyer agreement which contains the conditions favourable to the builder is not acceptable and the buyer is at liberty to not sign the same.

5. That respondent was obliged to provide possession of plot within 30 months from the date of booking but the same was not adhered to by respondent. Further, complainant submits that at the time of payment of booking amount, respondent did not even have license for raising the colony, no necessary approvals were shown by them and that they only acted upon the oral averments of respondent.

6. It is averred by complainant that on 28.03.2017, a demand of Rs. 31,10,787/- was raised by respondent and subsequently letters dated 09.05.2017 and 17.05.2017 were issued. To the said letters, complainant sent a reply through registered post on 07.06.2017 wherein complainant expressed his dis-interest and demanded that the amount of Rs.46,66,177/- may be refunded back with interest @18% as more than 5 years 3 months had elapsed and there was no development at the site.

7. That the complainant had also obtained information under the Right to Information Act, 2005 from the Directorate of Town and Country Planning, Haryana and it was informed that the respondent is not having a valid license and even the dues had not been cleared by the respondent.

8. That respondent is not interested in raising the colony, rather in only collecting the money and their attitude is evident from the fact that though they have not got any valid license and has even not paid the dues of the Government, as demanded from time to time, rather they have been collecting the money, which shows their malafide intention.

9. Furthermore, it is averred that plot buyer agreement is completely one sided and has been cleverly drafted by respondent in order to have all the conditions in its favor and have all options open which may be detrimental to the interest of its customer. Complainant submits that the terms are unilateral, thus, amounting to monopolistic and restricted trade practices.

10. That the complainant had preferred a consumer complaint before the Haryana State Consumer Disputes Redressal Commission bearing complaint no. 541 of 2018 titled as Ajay Sharma Vs. Idylic Resorts Pvt. Ltd. which has been withdrawn on 04.03.2019 with permission to file the present complaint before this Hon'ble Authority.

C. RELIEF SOUGHT:

11. Initially complainant prayed for refund along-with interest for the amount paid to respondent. Nonetheless, on 20.07.2022, Authority observed as under:

> *"...7. The colony having been completed, prima-facie the refund sought by complainant does not appear to be justified. An offer of possession deserves to be made to complainant by preparing a statement of accounts prepared as in the month of October, 2017. If complainant had delayed in making payments, respondents would be entitled to charge interest on such delayed payments @ MCLR+2% as is obtained on the date of passing this judgment. Further, complainants will be entitled to delivery of possession within 2 years of making substantial payments, for which due date of delivery of possession needs to be determined. Whatever due date is determined by Authority, delay interest from that date upto the date of receipt of certificate of Chief Engineer, HUDA shall be payable by respondents to complainant."*

In view of above order, complainant filed an application on 22.08.2023, wherein he prayed for the following relief(s):-

a) Direct the respondent to deliver possession of plot no. E-331 measuring 347 sq. Yards in Panchkula Eco-city at Sector 12, Panchkula Extension Part-II (Near Barwala); and

b) Further direct the respondent to pay interest @ 12% per annum for the delayed possession on substantial amount of Rs. 46,66,177/-

paid from 09.01.2012 to 26.12.2014, till the actual physical and legal delivery of possession; and

c) Pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the present case;

The said application dated 22.08.2023 was not objected by respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT:

Ld. Counsel for the respondent filed detailed reply on 12.04.2019 pleading therein:

12. That no cause of action has arisen in favour of complainant to file the present complaint, as the dispute involved in the complaint is exclusively triable by the Civil Court as the allegations made by complainant needs to be proved by leading lengthy and cogent evidence which can only be done in the civil court and the same cannot be decided in summary proceedings by this Hon'ble Court.

13. That further it is pertinent to note this Hon'ble Authority has no jurisdiction to try and decide the matter because as per clause 38 of the plot buyer agreement, if any dispute arises between the parties, the same shall be settled through arbitration and the proceedings shall be governed by the Arbitration and Conciliation Act, 1996.

14. That the present complaint is not maintainable in its present form because the complainant has filed the present complaint on wrong facts as possession was offered in time, with fastest pace of development. As the

complainant was investing money only for commercial purpose and when there was slump in the market he never turned up with the remaining amount and for taking possession of the plot. Now after more than seven years he filed this complaint on false grounds.

15. That the present complaint is also barred by limitation. The plot was purchased in the year 2012, after which almost 7 years have passed. Further, possession has already been offered and the complainant instead of challenging the same has filed the present complaint in March, 2019 on flimsy grounds and the present complaint should be dismissed on this short ground of limitation.

16. That even otherwise the complainant has no locus standi to file this complaint because there is no "privity of contract" between the parties. The complainant failed to approach the respondent for execution of agreement despite number of requests made by the respondent. In absence of contract this Hon'ble Court have no jurisdiction to decide this matter.

17. That the respondent developed a residential project and got license from the competent authority in the year 2012. Thereafter, the license was renewed from time to time and now the license was valid upto 11.05.2020. Afterwards, respondent developed the colony to the satisfaction of the authorities and the authorities inspected the same and found that the colony has been fully developed. Moreover, when the

respondent got license number 43 on 12.05.2012, this fact was in knowledge of complainant but he kept mum for almost more than 7 years after issuance of license. Thus, principle of estoppel and waiver applies as the complainant was in knowledge of the license and the approvals obtained by them.

18. That it was the complainant who declined to sign the plot buyer agreement. The plot buyer agreement is a document which establishes relationship between the complainant and respondent and this is the document which has been signed by other buyers. The contents of the agreement are general in nature. That the complainant is making lame excuses to save himself from the liabilities. Furthermore, in that agreement it has been specifically mentioned here that allottee is satisfied with all the approvals and now after seven years he cannot take the objection that the company is not having necessary approvals which otherwise is against the facts proved on record.

19. That as per section 7 of the Act of 2016, payment of plot, registration fee, stamp duty etc. are the essence of the agreement and if the allottee fails to make the due amount, the respondent company is fully authorized to cancel the allotment and forfeit the earnest money. The respondent submits that he is fully co-operative with the complainant and is not forfeiting the amount and is not cancelling the allotment but the complainant is still taking undue advantage of his own fault.

20. That the complainant has no legal right to claim possession of the plot because he could claim possession only after making timely payments. That the complainant failed to make payments in time though the respondent company made a number of requests demanding payments.

21. That the respondent got the payment from complainant only after approval of the colony. Further, respondent submits that the alleged cheque dated 08.01.2012 has not been received by the respondent. They dealt with the complainant only after getting the approvals and this fact was very much in knowledge of the complainant and he gave some payment only after that. Now after 7 years he is trying to make claim against the respondent on false and flimsy grounds.

22. Therefore, the present complaint must be dismissed being devoid of merit.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT:

23. During arguments, the learned counsel for complainant reiterated the facts of the case as stated in para no.3-10 of this order and the learned counsel for respondent reiterated the facts as stated in the reply of the case provided in para no.12-22 of this order. For the sake of brevity, such facts are not repeated herein.

F. ISSUES FOR ADJUDICATION:

24. Whether complainant is entitled to relief of possession along-with delay interest for delay in handling over the possession in terms of Section 18 of Act of 2016?

G. OBSERVATIONS OF THE AUTHORITY:

I. Objection regarding maintainability when there exists an Arbitration Clause.

The respondent has taken an objection that the complaint is not maintainable as there is an "arbitration clause" in plot buyer agreement and any dispute if so-ever shall be decided through arbitration. In this regard Authority observes that generally, if the plot buyer agreement has an arbitration clause, then as per section 8, arbitration becomes mandatory. However, provisions of RERA Act 2016 are said to override it being a special statute. The dispute herein pertains to developer delaying the possession of flat and claim for possession along-with interest in relation to the same. Section 18 of the Act 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 the possession, at such rate as may be prescribed. Further as per section 19(3), allottee shall be entitled to claim the possession of apartment, plot or building.

The Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section-88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act

.....

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on

10.12.2018, has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by Hon'ble Supreme Court is reproduced below:

> *"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

Furthermore, Hon'ble Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc. It held that:

> *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of*

concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."

Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainant is well within his rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected. Moreover, when plot buyer agreement is not signed, there arises no enforceability of the provisions of the said agreement,

II. Objection regarding Plot Buyer Agreement which is alleged by complainant to be devoid of mutual understanding.

In a one-sided or unilateral contract, there are two parties in which one is, called the offeror, who makes an offer to the other party. The offeree is the person who accepts or rejects the offer. A bilateral contract is different from a unilateral contract. In bilateral contracts, the parties exchange their mutual obligations which are often prevalent in business transactions where both the parties necessarily make various promises for the performance of one action, in exchange for the promise of the other. Law of contract is governed by the principle of *consensus ad idem*, wherein a contract becomes legally binding only when there is meeting of minds. The complainant in the complaint filed by him disputes that the plot buyer agreement which was sent to him on 20.10.2012, contained various clauses which were not as per mutual understanding due to which agreement was not signed. It is pertinent to mention here that as per complainant, respondent omitted the clause of possession time from the plot buyers agreement and when the complainant requested the respondent to incorporate the same in the agreement it was flatly refused.

It is an established law that one-sided contractual terms constitute unfair trade practice under Consumer Law in India. Hon'ble Supreme Court in the case of ***Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna***

and Ors, (2021) 3 SCC 241, held that the developers cannot coerce apartment buyers to be confined by one-sided contractual terms. Detecting such one-sided agreements as burdensome, the Court held that the equivalent would be established as an unfair trade practices under the consumer laws in India. It has also been ensured by the Hon'ble Supreme Court, keeping its progressive and consumer-centric view, that the parties in uneven bargaining positions are placed on an impartial footing. It has called for a harmonious balance between the challenging interests of the apartment buyers and developers, to accord requisite impetus to economic development and social welfare as a whole.

In this situation, as aforesaid by the Apex Court, the term of a contract will not be final and binding. Also, the incorporation of such one-sided and unreasonable clauses in the plot buyer agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Lastly, it is concluded that the party couldn't strive with the other party with the one-sided contractual terms. Thus, non-signing of plot buyer agreement is valid devoid of any illegality as it is proven that the agreement as sent by the respondent contains no term as to the date of delivery of possession to the buyer.

III. Finding on deemed date of possession.

Authority observes that there exists no possession clause in plot buyer agreement as sent by respondent to complainant. However, it is

submitted by complainant that respondent was obliged to deliver possession within 30 months from the date of booking. It is pertinent to note that there exists no proof as to the date on which the plot was booked however as per the payment reminder letter sent on 17.07.2012, it is proved that booking amount of Rs.5,00,000/- was received by respondent vide cheque dated 08.01.2012, though there is no receipt attached as to the same. Therefore, as a matter of prudence, it would be appropriate to take 17.07.2012 as the date of booking and allotment. Thus, as per assertions made by complainant, the deemed date of possession as per complainant comes out to be 17.01.2015 (i.e. 30 months from the date of booking).

However, it is pertinent to note that the Plot Buyer Agreement has only specified that the plot will be offered for possession within a reasonable time period. As per the observation of the **Hon'ble Apex Court in 2018 STPL 4215 SC titled as *M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr,*** 3 years has been taken to be reasonable time to hand over possession to the allottee. Thus, the respondent was duty bound to offer possession to the complainant latest within 3 years of the booking (17.07.2012), i.e. latest by 17.07.2015 but now, even after a lapse of 9 years, respondent has not offered a valid offer of possession of the unit. Thus, the deemed date of possession works out to be **17.07.2015.**

IV. Finding on validity of offer of possession

Authority observes that it is a matter of admittance, which is further proved from completion certificate filed by complainant as an additional document that completion certificate was issued on 11.05.2023. It is pertinent to note that respondent has submitted in his reply that he has offered possession to complainant but complainant never accepted the same, however, there is no proof attached in relation to it. Therefore, even if we go as per his submissions, the said offer of possession is held to be invalid as the possession should not have been handed over to the complainants without obtaining completion certificate whichever is earlier and this is a clear unfair trade practice. It is held that the respondent did wrong. This constitutes a deficiency in service as held in the case of ***Treaty Construction v. Ruby Tower Coop. Housing Society Ltd., (2019) 8 SCC 157*** as well as a breach of law.

25. After going through rival contentions of both the parties, Authority observes that complainant in this case was allotted plot no. 331 in Panchkula Eco City, Sector-12, Extention-II and plot size was 347 sq. yard. The total sale consideration of the plot was fixed at Rs.77,76,964/-, against which complainant made payment of Rs.46,66,177/-. The payment of Rs.46,66,177/- is admitted by the respondent during the previous hearings in this matter as held on 20.07.2022 at para no.3.

Further, it has been submitted by respondent that further payments were not made by complainant even after several reminders and that it was a construction linked plan in which complainant was supposed to make payments at pre-defined intervals. In the same order i.e., of 20.07.2022, Authority has held that:

> *"4.....Therefore, as per construction linked plan, respondents have been demanding further payments which complainant did not make. Adequate reasons have not been cited by complainant for not making such payments.*
> *Further, fact of the matter is that respondents have completed the colony, as has been certified by Chief Engineer, HUDA. There appears no default on the part of respondents. Respondents, however, on account of non-payment by complainant should have issued them a cancellation notice which they failed to do.*
> *5. On balance, Authority observes that there appears to be default on the part of complainant in not making due payments for no justifiable reason and respondents on the other hand did not issue a cancellation notice and complainant has suffered loss of time value of money paid by him to respondents."*

26. Therefore, the facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the plot buyer agreement. The Authority observes that the respondent has failed to fulfil its obligation as possession of the unit should have been delivered by 17.07.2015. Now, even after a lapse of 9 years, respondent has not offered a valid offer of possession of the unit. Complainant, however, does not wish to withdraw from the project and is

rather interested in getting the possession of his unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay; 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 complainant till date.

27. Further it is pertinent to mention that vide order dated 20.07.2022, Authority has observed that 17.10.2017 shall be treated as date of completion of colony and period after 17.10.2017 would be considered to be Zero Period. The relevant part of the order dated 20.07.2022 is as follows:

> *"6. Authority considers that in interest of equity and justice, it would be fair that 17.10.2017 shall be considered as the date of completion of colony and equities between the parties will be decided as on that date. The period after 17.10.2017 till now will be considered as zero period. Also, the matter remained sub-judice earlier before Consumer Court and now before RERA during this period. Therefore, period after October, 2017 will be treated as zero period for both the parties.*
>
> *7. The colony having been completed, prima-facie the refund sought by complainant does not appear to be justified. An offer of possession deserves to be made to complainant by comparing a statement of accounts prepared as in the month of October, 2017. If complainant has delayed in making payments, respondent would be entitled to charge interest on such delayed payments @MCLR + 2% as is obtained on the*

date of passing of this judgement. Further complainants will be entitled to delay possession within 2 years of making substantial payments, for which due date of delivery of possession needs to be determined. Whatever due date is determined by Authority, delay interest from that date upto the date of receipt of certificate of Chief Engineer, HUDA shall be payable by respondents to complainant."

However, it is observed that said interim order has not been complied with by the respondent. He has utterly failed to fulfil his obligations and disobeyed the directions issued by Authority to him. Authority had directed respondent to give a valid offer of possession along-with statement of accounts including both receivables and payables as complainant was also held liable for making delay in making payments to respondent.

28. It is pertinent to mention that after the interim directions issued by Authority on 20.07.2022, case was adjourned for 27.10.2022 for further arguments, however case was listed for 29.11.2022 and arguments did not take place for the reason that complainant counsel sought a short adjournment to further argue the matter. Matter was then adjourned to 25.01.2023, however on that date case was adjourned on account of adjournment request by respondent and order dated 20.07.2022 was still not complied with by both the parties. Case was then listed for further hearing on 25.04.2023, and on that date respondent submitted that in compliance of order dated 20.07.2022, he had offered possession to the

complainant, however it was the complainant who did not come forward to take the possession of the plot and further in compliance of said order he has not charged interest after period of October 2017. On the said date i.e. on 25.04.2023, it was submitted by counsel for complainant that respondent has not obtained Occupation Certificate till date and that he is ready to take possession of the plot, but firstly respondent should settle the accounts of the complainant. Thereafter, upon hearing these submissions made by both the parties, the Authority directed complainant to submit his calculations of interest on account of delay caused in offering possession and also directed respondent to submit status report of the Occupation Certificate/ part completion certificate along-with a fresh statement of account mentioning his receivables till the next date of hearing. However, the said interim order was not complied with and on the next date of hearing, i.e. on 01.08.2023, Authority granted one more opportunity to both the parties to comply with order dated 25.04.2023. But the said order was not complied with even on the next date of hearing by respondent; however it was complied by complainant by filing an application on 22.08.2023, mentioning the calculation of interest.

29. Therefore, in view of the above status of proceedings it is observed that respondent did not comply with the directions issued by Authority and during this time, facts and circumstances of complaint changed. Those order/ direction did not attain finality due to which this final order is

passed considering the facts and circumstances as on the date of final hearing. Further it is observed that at the time of passing of said interim order dated 20.07.2022 wherein zero period was declared by the Authority, project was near completion and Occupation Certificate was to be received soon by respondent. Now the present status in relation to occupation certificate is that respondent has received it much later on 11.05.2023, i.e. after a gap of 6 years. For those 6 years, respondent was having an opportunity to settle the accounts with complainant in terms of order dated 20.07.2022, but respondent did not chose to do so despite being at fault. Equity earlier laid down by Authority by considering Zero Period does not appear to be justified at this stage as complainant has been waiting for last 6 years to take possession. Therefore, in view of these changed circumstances, Authority concludes that no zero period exists after October, 2017 and that complainant has now become entitled to delay interest from the deemed date, i.e. 17.07.2015 till the date of valid offer of possession supported with Occupation Certificate.

30. Further, Authority observes that the complainant also defaulted in making timely payment of instalments. Thus, complainant is also bound to make the pending payment with delay interest as per RERA rules.

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

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

"Rule 15: *"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"."

32. 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. 01.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

33. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the deemed date of possession i.e. 17.07.2015 till the date of passing of this order i.e. until 21.11.2023.

34. Authority has got calculated the interest that respondents is liable to pay to the complainant from deemed date of possession till the date of completion of project which comes out to be Rs. 41,91,569 /- and further monthly interest of Rs. 42,603/- will be charged in case respondent fails to offer possession within the prescribed time period, as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued (in ₹)
1.	46,66,177/-	17.07.2015	41,91,569/-
Total:	46,66,177/-	-	41,91,569/-
Monthly interest:	46,66,177/-	-	42,603/-

H. DIRECTIONS OF THE AUTHORITY

35. 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 issue an offer of possession to complainant along-with a statement of account in consonance with the terms of RERA Act, 2016 and rules of 2017 within a period of 60 days from the date of uploading of this order, incorporating therein amount of upfront delay interest of ₹41,91,569/- (till date of order i.e. 21.11.2023) to be paid to complainant towards delay already caused in handing over the possession. In case of failure on part of respondent in not issuing said offer within prescribed time, monthly interest of Rs.42,603/- shall accrue in favour of complainant w.e.f. 21.12.2023.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of valid possession offered to him.

(iii) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

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

.....
NADIM AKHTAR
[MEMBER]