



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	2211 of 2022
Date of filing:	09.09.2022
Date of first hearing:	08.02.2023
Date of decision:	08.11.2023

Sh. Dinesh Kaushik, Dinesh Kumar Sharma S/o Late Sh. L.D. Sharma,

R/o House no. 1064/5, Patel Nagar, Near Police Station,

Gurugram (Haryana)

.....COMPLAINANT

**Versus**

Suncity Projects Pvt. Ltd,

Regd. Office: N-49, 1<sup>st</sup> Floor, Connaught Place,

New Delhi – 110001

.....RESPONDENT

**CORAM:** Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

**Present:** - Sh. Dinesh Kumar, Complainant

Sh. Neeraj Gupta, counsel for complainant

Sh. Himanshu Gupta, counsel for respondent

*Geeta Rathee*

**ORDER (Dr. GEETA RATHEE SINGH - MEMBER)**

1. Captioned complaint has been filed on 09.09.2022 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 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 complainant, the details of sale consideration, the amount paid by the complainant and 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	Suncity Rewari Township, Sector-7, Rewari
2.	RERA registered/not registered	unregistered
3.	Nature of the Project	Residential Plotted Colony
4.	Plot no.	E-121



5.	Plot area	358.8sq.yrds
6.	Date of builder buyer agreement	30.08.2010
7.	Deemed date of possession	Clause 17- within 18 months from the date of execution of agreement or from sanctioning of all service plans of entire township whichever is later.
8.	Total sale price	₹24,68,544/-
9.	Amount paid by complainant	₹18,85,000/-

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

3. Facts of complainant case are that complainant had booked a residential plot bearing no. E-121, admeasuring 358.8 sq.yrds on 15.02.2006 in respondent project, namely "Suncity Rewari Township" situated at Sector 7, Rewari. Builder buyer agreement (hereinafter referred as BBA) was executed between the parties on 30.08.2010, Copy of same has been annexed as Annexure C-2 with the complaint book. Total sale price of plot was ₹24,68,544/- out of which complainant had paid an amount of ₹18,85,000/- in the year 2011. Complainant had opted for construction link plan. Receipts of





amount paid by the complainant are annexed as Annexure C-1,2,4 at page nos.17-37 of the complaint book.

4. As per clause 17 of BBA construction of plot was to be completed within 18 months from the date of signing of agreement. Accordingly, due date comes to 02.03.2012, however respondent has failed to handover possession till date. Further, complainant had alleged that he wrote many letters from 26.05.2010 to 30.09.2011 to respondent stating that there is no development at site and even basic amenities like roads, sewerages etc. were lacking and had enquired about current status of the project but respondent never replied to said letters.
5. Complainant received a letter dated 12.01.2015 from respondent, wherein ₹ 23,87,957/- had been demanded as balance amount towards cost of plot. Thereafter, complainant approached respondent and clarified that amount demanded in letter dated 12.01.2015 is exaggerated but respondent, being adamant, kept on demanding money irrespective of the status of construction at site.
6. Complainant was not left with any remedy but to approach Civil Court at Gurugram, by way of filing a civil suit in March 2015. During said proceedings, complainant had come to know that demand of enhanced EDC was challenged, before Hon'ble Punjab and Haryana High Court and same is stayed and developers are directed not to demand



enhanced EDC from the allottees. However, respondent assured the Court that he will comply with the orders passed by Hon'ble Punjab and Haryana High Court and not demand the enhanced EDC from allottee and thus civil suit was withdrawn. However, respondent kept on demanding amounts from allottees without taking interest in construction.

7. Complainant had alleged that amount of ₹ 18,85,000/- stands paid in year 2011 to respondent toward booked plot and ₹ 5,83,544/- stands as balance to be paid at time of possession. Further, till date the construction work has not been completed at site. Complainant had also came to know that completion certificate has not been issue to the part of colony, in which the plot of complainant is situated. Complainant stated that in present case respondent had miserably failed to handover possession to complainant as per time stipulated in builder buyer agreement executed between parties. Hence, present complaint has been filed seeking relief of possession along with delay interest.

### C. RELIEF SOUGHT

8. The complainant has sought following reliefs:
- (i) To direct the respondent-company to give possession of the plot.



- (ii) Respondent may be directed to pay the delay compensation, as per provisions of the RERA Act;
- (iii) Respondent may be directed to pay the compensation of ₹ 10,00,000/- for mental agony and financial loss suffered by the complainant.
- (iv) Respondent may be directed to pay ₹ 2,00,000/- to the complainant on account of deficiency in the services of respondent and also ₹ 55,000/- towards the litigation charges;
- (v) Any other relief -remedy which is deemed fit by this Hon'ble Authority.

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

Learned counsel for the respondent filed detailed reply on 19.04.2023 pleading therein:

9. That, the complainant had approached respondent for allotment of residential plot and paid Rs. 5,60,000/-. Thereafter, allotment letter dated 23.03.2010 was issued in favour of complainant for plot bearing no. E-121, admeasuring 358.80 sq.yrds in "Suncity Rewari Township", situated at Sector-7, Rewari. Complainant made payment of ₹ 3,25,000/- on 28.05.2010 against the demand of ₹ 4,44,640/- without any explanation. Builder buyer agreement was executed between parties on 30.08.2010, whereby basic sale price of ₹ 6400/-





per sq. yards was fixed for plots and preferential location price @ 480/- per sq. yards of said plot will be paid by complainant and over and above said basic sale price and preferential location charges. Complainant was also liable to pay EDC, IDC and other charges as provided under Clause 2E and 2F of agreement. Timely payment was the essence of the agreement. Thereafter, various demand letters were issued by respondent in consonance to agreement executed between parties on 18.12.2010; 23.03.2011; 01.07.2011 but complainant continue to disregard the payment schedule. On 04.10.2011, complainant had paid an amount of ₹ 10,00,000/- against demand of ₹ 17,25,270/-. Further it is stated that complainant had not paid any single payment thereafter. Thus, it's been twelve years since the last payment was made by the complainant. Further demand of ₹ 3,44,448/- was issued by respondent on 14.02.2012 but complainant had not replied to the same again.

10. On 08.11.2012, respondent gave offer of possession of plot to complainant and demanded balance sale consideration of ₹ 12,02,474/- but complainant choose not to reply to the same. Complainant had not communicated with respondent since 2011 and after 12 years files a case for possession before the Authority.
11. Respondent had issued final call notice dated 12.02.2013 for payment of 12,02,474/- along with interest but same had not been replied till



date. Since all facilities were already completed in the project and respondent had applied to DTCP for grant of part completion certificate in respect of the township vide letter dated 18.06.2013.

Copy of the same is annexed as annexure R-11.

12. Again a final call notice dated 08.07.2013 was sent to complainant for payment of ₹ 12,02,474/- along with interest but complainant still failed to deposit the amount. Since, complainant was delaying payment and failed to make any payment since 2011, respondent issued final call letter dated 12.01.2015, where in it was specifically mentioned that if complainant fails to pay outstanding dues within 15 days from date of this notice, the allotment shall be treated as cancelled. Again complainant never replied to the same. Thereafter also notices were issued to complainant on 25.02.2015, 03.06.2015 and 23.06.2015 but complainant failed again to pay pending dues. Copies of all reminder letters are annexed as annexure R-12,13,14,15,16.
13. Finally, a letter dated 16.07.2015, was issued to complainant with clear notice that allotment shall deemed to be cancelled if outstanding dues are not paid. However, complainant again chooses not to reply. In para 23 of reply, respondent stated that allotment of complainant was cancelled vide notice dated 16.07.2015, after waiting for good 11 years and prepared the cheque for refund of ₹ 18,85,000/- vide cheque





bearing no. 006170 dated 14.09.2022. Apart from verbal communications, the said fact was also communicated through letter dated 24.11.2022. Now, plot in question stands allotted to third party on 18.01.2023 and thus complainant has no right and interest over the same.

14. It is pertinent to mention that 700 allottees have already taken the possession of their respective plots as on date after making their complete payments and enjoying the same. Even conveyance deeds stands registered in favor of abovementioned allottees much prior to filing of this complaint and enjoying their plots without any intervention. Copies of conveyance deed have been annexed as Annexure R-20 and R-21.
15. Complainant has approached this Authority with unclean hands as it deliberately concealed the demand notices and reminder letters which included the factum of cancellation. Respondent has also referred to a judgment passed by Hon'ble Supreme Court in "Kishore Samrite Vs. State of U.P. 2012(10) Scale 330", Hon'ble Apex Court deprecated the practice of parties to litigation approaching the court with unclean hands and duty to the courts to deal with such litigants firmly.
16. Captioned complaint is hopelessly barred by delay and laches. Therefore, complaint be dismissed while imposing an exemplary heavy cost.



**E. REPLICATION FILED BY COMPLAINANT ON 15.09.2023:**

17. Complainant filed a replication on 15.09.2023 stating therein preliminary objections taken by respondent in reply, are unreasonable, illegal and hence liable not to be considered. Complainant stated that amount of ₹ 5,60,000/- was taken from complaint in year 2006, however license was obtained in year 2010 by respondent from competent authority. Complainant had paid an amount of ₹ 18,85,000/- till January 2011 out of basic sale price i.e. 24,68,544/- and as per builder buyer agreement dated 30.08.2010, possession was to be handed over by 02.03.2012. Respondent had delayed the project and even as per respondent reply, it is clear that part completion was obtained in 2017. Thus, respondent failed in duty to handover the plot in 2012. Further, complainant stated that the land of this colony has been subject matter of litigation and thus respondent has misled the allottees throughout. Further, complainant mentioned the malice act of respondent by stating that as per respondent allotment was cancelled vide letter dated 24.11.2022 but cheque of paid amount to be refunded was prepared in advance dated 14.09.2022 by respondent. This event of respondent clears that this cancellation is a setup.
18. It is stated that captioned complaint was filed on 09.09.2022 and copy of receipt of complaint is also annexed as C-5. Notice was issued on 13.09.2022 by the Authority and respondent was directed to appear on



15.11.2022. From all the facts stated, it is clear that respondent was aware of the present complaint filed by complainant and during pendency of captioned complaint, alleged cancellation is totally illegal and arbitrary and hence no effect on the right of complainant. Even, the allotment to third party is a sham transaction.

19. Further, complainant stated that in present complaint, complainant has sought relief of possession as he had paid a substantial amount to respondent in year 2011 itself but respondent never handed over the possession to complainant, therefore having no option complainant had filed the captioned complaint before Authority.

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

20. During oral arguments complainant's counsel has reiterated arguments as mentioned in para 3-8 of this order. Further, he briefly submitted that substantial amount of ₹ 18,85,000/- was paid to respondent in the year 2011 but respondent had not handed over possession to complainant till date. Rather, he had cancelled the allotment on 24.11.2022 which was during pendency of the captioned complaint and interestingly had prepared a cheque dated 14.09.2022 of paid amount to be refunded to complainant, which is almost 2 months before cancellation of the allotment. Further, he stated that respondent had offered possession to complainant in the year 2012, which was denied by complainant as same





was not accompanied with completion certificate. It is an admitted fact in reply of respondent that respondent had applied for part completion certified (hereinafter referred as CC) in the year 2013 and obtained the same in year 2017. So, possession offered in year 2012 by respondent becomes void ab initio.

21. Further, concluding his arguments, counsel for complainant stated that respondent had earlier also issued illegal demands which were duly contested by complainant by way of filing civil complaint against respondent. However, same was withdrawn later on, assurances given by respondent that he will handover possession without illegal demands. However, respondent never stopped raising illegal demands on account of enhanced EDC etc.
22. Further, complainant counsel has filed a copy of submissions during hearing, wherein he has referred to certain judgments passed by different Courts which deal with objections raised by respondent on account of retrospective effect of provisions of RERA Act, 2016 and limitation and cancellation of booked plot during pendency of matter pending before any forum. References to said judgments have been made below:
  - i. Complainant has referred to judgment passed by Hon'ble Apex Court in case of "**M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (supra)**", wherein it is clearly stated that the RERA



Act is Retroactive, and applies to any allotment prior to the RERA Act came into force.

ii. In civil appeal No. 10215 of 2011, titled as “ **Shivshankara & Anr. Vs. H.P. Vedavyasa Char, Supreme Court dated 29.03.2023.**” Para 16 of the judgment says that the principle of Lis Pendens is based on justice, equity and good conscience and any transfer of any right in the immovable property during pendency of proceedings, adversely affects the rights of the parties and as the Section 52 of the Transfer of property Act provides that any transfer during pendency is non est in the eyes of law, hence, the transfer is subject to decision of the court.

iii. Further counsel for respondent referred to certain judgments on issue of limitation which are quoted below for references:

Judgment passed by Assam Real Estate Appellate tribunal at Gauhati, in **Appeal no. 4 of 2022**, decided on 18.07.2022. “ *Para 28 of the judgment provides that there is no limitation provided in the RERA Act and the jurisdiction of civil suit is barred and any complaint filed under section 31 of the Act, cannot be left remediless. Further, Para 29 says that as the schedule provided in the agreement was not adhered to by either of the parties, any question on the violation of schedule of payments by the allottee / complainant, has no relevance to the case, while ordering possession of the property; Ganesan Rep by its Power agent vs. The Commissioner, the Tamil Nadu, reported as 2019 AIR ( Supreme*



Court) 2343; *Nityanand M. Joshi vs. The Life Insurance Corporation Of India, reported as 1970 AIR ( SC) 209; Commissioner of Income tax Vs. H.M.T Ltd, reported as 2012(340) ITR 219.*

In all above mentioned cases, it is clarified time and again that any aggrieved person filing a complaint under section 31 of the RERA Act, cannot be denied the legal remedy just on the ground of limitation.

23. On the other hand, learned counsel for respondent reiterated arguments mentioned in 9-16 of this order. Further, respondent stated that possession was offered to the complainant in the year 2012. Thereafter also, various demand letters were issued till 2015 to complainant but complainant had neither took the possession nor replied to any of demand letters issued by respondent. Due to non-payment of pending dues after sending various demand letters, respondent left with no option had cancelled the allotment on 24.11.2022 along with cheque dated 14.09.2022 of paid amount to be refunded to complainant. After 2011, no payment was made by complainant i.e. almost after delay of 10 years, complainant has filed the captioned complaint seeking possession of the plot. Now, third party rights had already been created as plot was allotted to some other allottee on 18.01.2023. Further, respondent counsel apprised the Authority that complainant nowhere in complaint had challenged the offer of possession made in year 2012 and had not placed on record any communication since 2012, with the respondent.





Furthermore, respondent counsel stated that contention of complainant that due to filing of present complaint, plot has been allotted to some third party in a shame transaction, is not maintainable for the reason that notice issued by Authority in captioned complaint was never delivered to the respondent, which is evident from courier report of the Authority available at the Website. Further, during hearing respondent had referred to certain judgments relevant in present case and had requested Authority to file hard copy of said judgments in registry. Same was allowed to be filed in registry by the Authority and respondent had filed those judgments as additional document on 08.11.2023 in the registry of Authority and same are taken on record.

**G. ISSUES FOR ADJUDICATION**

24. Whether or not respondent had delayed possession?
25. Whether or not the possession offered to complainant by respondent on 08.11.2012 is a legally valid offer of possession?
26. Whether the complainant is entitled to possession along with interest or not?

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

The Authority has gone through the rival contention and the documents placed on record. In the light of the background of the matter Authority observes and orders as follows:



27. Respondent has raised an objection that the Authority does not have jurisdiction to decide the complaint on following grounds:
- i. Present Complaint is barred by delay and laches as it has been filed after delay of more than 10 years, i.e., after offer of possession made to complainant on 08.11.2012.

In this regard, Authority has referred to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as "M.P Steel Corporation v/s Commissioner of Central Excise.", wherein the Hon'ble Apex Court had held that Indian Limitation Act applies only to the courts and not to the Tribunals.

Authority further observes that promoter in the present complaint has till date failed to fulfil his obligation pertaining to delivery of possession of booked unit in question because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

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Furthermore, respondent has placed reliance upon judgment passed by different RERA/Tribunals such as Gurugram RERA in complaint no. 1494 of 2022; Hon'ble Appellate Tribunal in appeal no. 1494 of 2022; Hon'ble Appellate Tribunal, Punjab in Appeal no. 114 of 2019. Here it is pertinent to mention that facts of the referred cases and present case differ to an extent that observations/findings in referred cases cannot be adopted in this case. For instance, para 16 of judgment passed by Gurugram RERA in complaint no. 1494 of 2022 is reproduced below for references:

*"As noted above, the possession of the subject unit was offered to the complainants on 05.09.2017, after obtaining Occupation Certificate on 29.08.2016 i.e. before coming into force of the Act. Thereafter conveyance deed of the unit was executed between parties on 01.02.2018 and present complaint was filed on 22.04.2022. there has been complete inaction on the part of the complainants for a period of mere than four years till the present complaint was filed in April 2022."*

Above stated para reflects that facts of the relied upon complaint are totally different from the present complaint, as in the present complaint respondent had offered possession to complainant on 08.11.2012, however respondent in his reply had admitted and annexed a copy of part completion certificate obtained on 14.03.2017 from the competent Authority. The very fact that offer of possession was made in 2012 was without part completion certificate made sufficient ground to make said offer of possession legally invalid. Complainant had filed captioned complaint seeking relief of valid possession which has not yet been





delivered by respondent. So, objection raised by respondent on ground of limitation, delay and laches does not hold any merit and is therefore rejected.

- ii. Another objection raised by respondent is that complainant had approached the Authority with unclean hands. To support his contention he referred to judgment passed by Hon'ble supreme court in "**Kishore Samrite Vs. State of U.P.[201(10) Scale 330]**", wherein Court has deprecated the practice of parties to the litigation approaching the Court with unclean hands and highlights the duty of the Courts to deal with such litigants firmly.

In this regard, Authority is of the view that mere quoting judgments without drawing relevance to them with the present cases or proving factum will not effect the merits of the present case. To prove that complainant approached the Authority with unclean hands need more concrete documents which establishes the guilty mind of complainant, which in the present has not been proved by respondent.

28. Factual matrix of the case is that complainant had booked a plot, admeasuring 358.8 sq.yrds in the real estate project namely, "Suncity Rewari Township" located at Sector-7, Rewari, being developed by respondent- promoter for basic sale consideration of ₹ 24,68,544/-. Builder buyer agreement was signed on 30.08.2010. At para 9 at page 11 of the complaint, reference to clause 17 of builder buyer agreement



has been made whereby, respondent was under an obligation to handover possession "within 18 months from the date of execution of this allotment agreement". Accordingly, deemed date of possession is alleged to be 02.03.2012. Respondent in reply at para 9 has simply denied the period of 18 months to be calculated from execution of agreement, without giving any further detailed reason for the same. Authority in order to ascertain the issue of delay possession had perused the clause 17 of builder buyer agreement. Said para is reproduced below for references:

*"The company shall make all efforts to complete the development work of the Township within 18 months from the execution of this allotment agreement or from the sanctioning of all services plans of the entire Township whichever is later, subject to force majeure events".*

As per above stated clause, date of sanctioning of all services plans of entire Township was important to determine the actual deemed date of possession, however, both the parties have neither mentioned the exact date of approval of service plans in their pleading nor has place on record any document mentioning the said date. In absence of said document as well as taking note that respondent had also not challenged the deemed date alleged by complainant in the present complaint nor has claimed any force majeure conditions. Authority is of view that as per clause 17 date for handing over of possession will



be 18 months from signing of builder builder agreement, which comes to 29.02.2012.

In view of above, it is safely concluded that one of the grouse of the complainant for delayed possession is established as respondent had delayed the possession, however, to ascertain how much delay has been caused in handing over of possession, it is important to deal with one of the contention raised by respondent that a valid possession stands offered to complainant on 08.11.2012 and it is the complainant who neither accepted the said possession nor denied the same.

Authority observes that respondent itself has accepted in its reply and annexed a copy of part completion certificate dated 14.03.2017, meaning thereby the offer of possession made on 08.11.2012 was not accompanied by part completion certificate. Therefore, said offer was not valid offer of possession. It is also a matter of fact that respondent, subsequent to obtaining part occupation certificate in the year 2017 never offered fresh legal valid offer of possession to complainant.

29. Further, admittedly, complainant had been allotted a unit vide builder buyer agreement dated 30.08.2010, however at para 22 of reply respondent stated that unit allotted to complainant was cancelled in the year 2015 itself vide final call letter dated 16.07.2015 on the ground of non-payment of pending dues by complainant even after

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issuance of various reminders from the year 12.02.2013 to 16.07.2015.

On perusal of the said letter it is observed that the content of said letter provides that in case said demands were not paid allotment will be deemed to be cancelled. However, para 23 of reply reflects that communication of said cancellation was sent vide letter dated 24.11.2022 along with a cheque of refund of paid amount dated 14.09.2022.

The chronological order of acts of respondent are quite mismatched as respondent had not clarified whether he is stating that cancellation was effected in the year 2015 or in year 2022. If it is considered that cancellation was effected in the year 2015 vide letter dated 16.07.2015, then respondent should have refunded the money to complainant immediately on cancellation. However, respondent surprisingly after seven years issued another letter dated 24.11.2022, mentioning the cancellation and had attached the cheque of paid amount with date 14.09.2022 i.e. two months prior to the cancellation. Issuance of subsequent cancellation letter dated 24.11.2022 makes it quite clear that even post letter dated 16.07.2015 respondent has continued to acknowledge complainant as its allottee. Further, it is observed that respondent is in a habit to issue cancellation letter to complainant after filing of complaints against him. As in present case complainant at para 7 of complaint had mentioned that he had filed a

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case against respondent before Gurugram court in March 2015, consequently thereupon respondent issued final demand cum cancellation letter dated 16.07.2015. As per the averment of complainant the case was withdrawn by complainant on assurance given by respondent that it shall comply with order passed by Hon'ble Punjab and Haryana High Court and shall not demand enhanced EDC from allottee. Respondent in its reply has not denied this claim of complainant. Further, after filing of present complaint i.e on 09.09.2022, respondent had again issued another cancellation letter dated 24.11.2022 to complainant. It is apparent that cancellation issued by respondent on 24.11.2022 is an afterthought of respondent to evade its obligation to handover possession of the unit in question along with delay charges payable to the complainant.

Taking note of above stated situation, Authority is not hesitant to observe that respondent is using its arbitrary overhand position against the allottees and issues illegal and baseless cancellation letters only to evade its liabilities towards the complainant. Furthermore, it appears that the fact that the real estate price has seen boost in recent time has set greed in the promoter to earn more profits by re-selling the same plot at a premium rate. In such cases, fate of common man is left in doldrums. Authority observes that it is a matter of fact that the complaint was filed on 09.09.2022 seeking relief of valid possession



along with delay interest from respondent. Thus, cancellation letter issued on 24.11.2022 by respondent i.e during lis pendens shall be subject to outcome of this complaint. It is noteworthy that the complainant had paid an amount of ₹ 18,85,000/- out of total sale consideration of 24,68,544/- i.e. 76% of the price by the year 2011 which shows the bona fide on part of the complainant. Per contra, respondent had been using the amount paid by complainant since then but has failed to fulfill his obligation to handover possession of plot in question by 29.02.2012 (as per clause 17 of builder buyer agreement). Infact, by the said deemed date of possession i.e. 29.02.2012 respondent had not even applied for part completion certificate. Authority observes that after accepting 76% of payment from complainant out of the sale consideration respondent cannot arbitrary cancel the unit allotted to complainant. Even in case any amount was due on part of complainant respondent had the remedy to file a complaint to seek interest on delay payments on part of complainant, however, that is not the case here. On contrary, after filing of present complaint respondent hastily cancelled the plot. The conduct of the respondent speak a lot regarding its intentions.

30. Lastly, with regard to the allotment made to third party on 18.01.2023 by respondent of the unit allotted to complainant is concerned, respondent had taken a stand that he was not aware about filing of





captioned complaint at time of allotment of plot to third party, as notice issued by Authority was never served upon him, as same was issued on wrong address.

In this regard, Authority observes that notice to respondent was issued on 13.09.2022, which was received back with a report that "receiver shifted from given address". However, Authority is unable to understand that how Mr. Yaseen Sethi, appeared for respondent on 1<sup>st</sup> date of hearing i.e. on 08.02.2023, if notice was not served upon respondent. If respondent never had any access to copy of complaint or never received the complaint then how was it in the knowledge of respondent that notice was issued for "wrong address" as address provided in the Performa-B of complaint was wrong. Authority is of the considered view that respondent is blowing hot and cold at the same time as stating that they were not aware about proceeding before Authority and stating that notice was issued on wrong address. So, respondent plea that due to non-service of notice, respondent was unaware of filing of captioned complaint and had allotted the plot in question to third party during pendency of present complaint is not tenable in eyes of law. Further, it is clarified that as per law of the land during pendency of any litigation, the subject matter property of said case cannot be transferred or relinquished by any of the parties and if it is so, same is subject to outcome of final orders.



The facts set out in the preceding paragraphs demonstrate the mala fide conduct and unfair trade practice being followed by the respondent-promoter, which needs to be dealt with strictly in order to safeguard the interest of allottees as per provisions provided under RERA Act 2016.

31. As on today, project in which unit allotted to complainant is located is ready for handing over possession as part completion certificate was granted to respondent in year 2017 by competent Authority. The complainant in the present complaint wishes to continue with the project. In the given circumstances, when inordinate delay of twelve years have already been caused, complainant, as per Section 18 of RERA Act 2016 is entitled to receive upfront payment of delay interest from deemed date of possession till the date of this order and further monthly interest till the date a valid offer of possession duly supported with completion certificate/part completion certificate is issued to the complainant qua the unit/plot in question. Authority deems appropriate to invoke provisions of Section 18 of the Act which provides that interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

*Rathee*

(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. 08.11.2023 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 due date of possession i.e 29.02.2012 till the date of a valid offer of possession.
34. Authority has got calculated the interest on total paid amount from due date of possession i.e 29.02.2012 till the date of order i.e 08.11.2023 which works out to ₹ 42,56,136/- and further monthly of ₹ 16,655/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession	Interest Accrued till 08.11.2023 (in ₹)	Monthly interest
1.	18,85,000/-	29.02.2012	23,71,136/-	16,655/-

*Signature*

<b>Total:</b>	<b>42,56,136/-</b>			<b>16,655/-</b>
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35. Lastly, an application was filed by respondent on 11.07.2023 under Section 151 CPC for modification of order dated 20.04.2023, wherein cost of ₹ 5,000/- payable to the Authority and ₹ 2,000/- payable to the complainant for not filing reply on time. Respondent stated that said cost has been inadvertently imposed as reply was filed before scheduled date of hearing i.e. 19.04.2023 vide receipt no. 23782. Respondent prayed for waiving of the said cost.

Perusal of file, it is reveals that respondent was directed to file reply within three weeks from 08.02.2023 with advance copy supplied to complainant. However, respondent has filed reply one day before next date of hearing i.e. 19.04.2023. Therefore, Authority decides that cost was rightly imposed as time of three week was granted to file reply but respondent had not complied with the direction in time bound manner. Accordingly, application filed by respondent for waiving of cost is rejected.

#### J. DIRECTIONS 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 handover possession of the allotted plot no. E-121 in real estate project "Suncity Rewari Township, Sector 7 Rewari" to the complainant within 30 days from uploading of this order on the website of the Authority along with copy of part completion certificate and statement of account of receivable and payable amounts after duly adjusting the delay interest allowed to complainant in this order below.
- (ii) Respondent is directed to pay upfront delay interest of ₹ 42,56,136 /- (till date of order i.e 08.11.2023) to the complainant towards delay already caused in handing over the possession within 45 days from uploading of this order. Further, on the entire paid amount of ₹18,85,000/- monthly interest of ₹ 16,655/- shall be payable by the respondent to the complainant upto date of actual handing over of possession after obtaining occupation certificate.
- (iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to him.
- (iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.





- (v) Respondent is directed to pay the cost of ₹ 5,000/- payable to the Authority and ₹ 2,000/- payable to the complainant imposed vide order dated 20.04.2023 for delay in filing reply within 2 weeks of the uploading of this order.

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



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



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