

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by 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 project, the details of sale consideration, the amount paid by the complainant, 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.	Park Elite Floors, Sector 75, 82 & 85, Faridabad.
2.	Nature of the project.	Independent floors with Ground plus two floor structures
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	H4-17-FF, admeasuring 1022 sq. ft. First Floor



6.	Date of letter of allotment	24.12.2009
7.	Date of floor buyer agreement	None
8.	Due date of possession	24.12.2012 (3 years from date of allotment)
9.	Basic sale consideration	Not available
10.	Amount paid by complainant	₹ 23,26,963/-
11.	Offer of possession.	Not given

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the complainant had booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75,82 & 85, Faridabad, Haryana in the year 2009. Vide allotment letter dated 24.12.2009, complainant was allotted unit no. H4-17 First Floor, measuring 1022 sq. ft. Park Elite Floors, Parklands, Faridabad. A copy of the allotment letter issued by the respondent is annexed as Annexure C-2 of complaint file. That at the time of allotment it was the representation of the respondent that possession of the unit would be delivered within 24 months with a grace period of 6 months for applying for occupation certificate. Respondent without execution of a



builder buyer agreement kept on raising demands towards sale consideration. Complainant has paid a total amount of ₹ 23,26,963/- towards the booked unit till November 2012.

4. Despite a lapse of more than 10 years from the date of allotment of unit, respondent has failed to deliver possession of the unit till date. Aggrieved by the non delivery of possession of the unit, complainant had contacted the respondent on several occasions for handing over of possession but received no response from the respondent. Respondent has miserably failed to complete the project and offer possession of the booked unit to the complainant.
5. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEFS SOUGHT

6. That the complainant seeks following relief and directions to the respondent:-
 - i. Direct the respondent to handover possession of the unit H4-17-FF, First Floor Park Elite Floors, Parklands, Faridabad.
 - ii. Direct the respondent to pay delay penalty in terms of Section 18 of the Act from the date of completion of two



years and six months from the date of first receipt of money against the booking of the unit .

- iii. Declare that the amount collected towards increase in super area as illegal as there is no increase in the area from the one approved by the State Authorities and there is no approved revision in building plans thereafter from the competent authorities.
- iv. Direct the respondent to return the amount collected towards increase in super area for the reason that there was no increase in the area and no revised sanctioned plans showing increased area were ever supplied to the complainant.
- v. Direct the respondent to pay compensation to the tune of ₹. 5,00,000/- on account of mental agony and harassment.
- vi. Direct the respondent to compensate the complainant for loss of life of building by 10 years as the construction of the unit was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent.
- vii. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.



7. During the course of hearing dated 05.09.2023, learned counsel for complainant had submitted that as per the allotment letter dated 24.12.2009, the super area of the unit had been mentioned as 94.95 sq. mtrs whereas, in the offer of possession issued to the complainant on 22.06.2023, the area of the unit has been increased to 109.53 sq. mtrs without any component wise details of said increase in area. Due to the increase in the area, the basic sale price of the unit has also been increased which has caused additional financial burden on the complainant. In such circumstances complainant cannot rightly ascertain the details of the unit booked by the complainant and the terms of handing over of possession. In view of the averments of the complainant, respondent vide order dated 05.09.2023 was directed to seek clarification from his clients with regard to the actual area of the unit being offered to the complainant and component wise details of the change in area of the unit from the area mentioned in the allotment letter dated 24.12.2009. Said information has not been filed by the respondent till date.

8. Today, Mr. Nitin Kant Setia, learned counsel for the complainant submitted that he is not pressing upon the issue with regard to the increase in the super area of the unit and complainant is willing to forego the relief prayed for vide clause (iii) and (iv) of the prayer clause of the complaint. Learned counsel for the complainant further agitated that complainant in this case had booked a unit in the project of the



respondent in the year 2009. No builder buyer agreement has been executed till date between the parties. In the absence of builder buyer agreement it cannot rightly ascertain as to when the possession of said unit was due to be given to the complainant. Learned counsel for the complainant relied upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. Taking a period of three years from the date of allotment, i.e., 24.12.2009, possession of the unit should have been delivered by the year 2012. However, respondent failed to offer possession to the complainant for more than 10 years past due date of possession.

9. Learned counsel for the complainant further submitted that respondent had received occupation certificate for the unit on 20.07.2022. However, an offer of possession qua the unit has been issued to the complainant only on 22.06.2023. Vide said offer of possession, respondent has raised a further demand of ₹ 7,63,916.55/- from the complainant without adjusting the component for delay possession charges for the delay caused in delivery of possession. In the said offer of possession dated 22.06.2023, respondent has failed to mention the amount of delay interest payable to the complainant on account of delay caused in delivery of



possession. Learned counsel for the complainant orally submitted that as per terms agreed between the parties, complainant was to receive delayed possession charges at the time of offer of possession. Therefore, the offer of possession dated 22.06.2023 is bad in the eyes of law. He prayed that direction be issued to the respondent to immediately handover possession of the unit to the complainant and to issue fresh statement of account for the unit in which the delay possession charges till date have been adjusted in the payable and receivable amounts.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 19.01.2023 pleading therein:

10. That the unit in question was booked by the complainant on 23.05.2009. On 24.12.2009, respondent duly allotted a unit bearing no. H4-17 on the first floor to the complainant. Respondent raised each and every demand strictly in consonance with the payment plan opted and agreed at the stage of booking. Due to the non-adherence to the timely payments by the complainant, respondent was constrained to issue reminder notices dated 05.09.2012, 10.10.2012, 16.11.2012 and 17.07.2021 respectively.
11. That the construction of the unit of the complainant has been duly completed in terms of the booking form. Occupation certificate qua the



unit of the complainant has been received on 20.07.2022. Respondent is in the process of offering possession of the unit to the complainant

12. The project "Elite floors" has been marred with serious defaults and delays in timely payment instalments by majority of customers. Further, construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in the case of M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdowns have been faced by the citizens of India including the complainant and the respondent which continued upto the year 2021. That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed.
13. During the course of hearing, learned counsel for the respondent submitted that after completion of construction work respondent had applied for grant of occupation certificate and received the same on 20.07.2022. Thereafter, respondent has issued an offer of possession to the complainant on 22.06.2023. However, despite issuance of offer of



possession, complainant has failed to come forward and take possession of the unit. He further submitted that the complainant has deliberately delayed in accepting the offer of possession for one reason or another. Respondent has completed all its formalities and the unit has been ready since grant of occupation certificate, i.e, 20.07.2022. Therefore, complainant should be entitled to delay possession charges only till the date of grant of occupation certificate, i.e 20.07.2022 as the delay after that in taking possession of the unit was because of complainant's own violation and respondent should not be held accountable for the same. Learned counsel for the respondent has relied upon the judgement passed by Hon'ble Supreme Court in Civil Appeal Nos. 6649-50 of 2018 titled 'M/s Supertech Ltd. Vs Rajni Goyal' wherein it has been observed that period of interest should close when the full occupation certificate was obtained by the appellant-builder as the respondent-purchaser could not have any further grievance after receipt of completion certificate with respect to delay in handing over possession. The Respondent – Purchaser ought not to be allowed to reap the benefits of her own delay in taking possession.



E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

**E.I Objection raised with regard to deemed date of possession
in the absence of a builder buyer agreement.**

That the complainant in this case had booked a unit in the project of the respondent in 2009. Thereafter, vide allotment letter dated 24.12.2009, complainant was allotted unit no. H4-17, First Floor, measuring 1022 sq. ft. First Floor, Park Elite Floors, Parklands, Faridabad. It is submitted by the complainant that at the time of allotment it was the representation of the respondent that possession of the unit would be delivered within 24 months with a grace period of 6 months for applying for occupation certificate. However, no builder buyer agreement has been executed between the parties till date. Further, there is no specific clause in the allotment letter to govern the timeline for deemed date of possession. In the absence of a builder buyer agreement, it is difficult to ascertain an exact date as to when possession of the unit was due to the complainant.

In cases such as these, where there is no specific deemed date of possession, respondent cannot be allowed to evade from its liability of delivery of possession of the unit to the



complainant in a time bound manner. Complainant cannot be made to wait endlessly seeking possession of the booked unit and payment of delayed possession charges in case possession has been delayed beyond a considerable time. Since delivery of possession is based on completion of entire construction and developmental works, therefore, a considerable period of time sufficient enough for completion of all such works can be held as the baseline for the purpose of calculation of deemed date of possession. In observing so, Authority places its reliance on a judgement passed by Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr wherein it has been observed that in absence of builder buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given, a period of 3 years has been observed as a reasonable period of time to complete construction and deliver possession of the unit.

In this case, respondent had already allotted a specific unit to the complainant on 24.12.2009, meaning thereby that a relation had begun between both the parties qua the said unit and respondent had begun raising demands for the same. Now taking a period of 3 years from the said date as a reasonable



time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 24.12.2012. It is observed that respondent builder should have delivered possession of the booked unit by the year 2012 to the complainant.

E.II Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per observations made in para EI of this order works out to 24.12.2012. Therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not



convincing enough as the due date of possession was in the year 2012 and the NGT order referred by the respondent pertains to year 2016, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”



Moreover, the respondent has not given any specific details with regard to delay in payment of instalments by many allottees. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

E.III Objection with regard to the offer of possession dated 22.06.2023 issued by the respondent and the period for which the complainant shall be entitled for payment of delay interest on account of delay caused in offering possession.

As per observations made in para EI of this order, possession of the unit should have been delivered to the complainant by 24.12.2012. An offer of possession was made to the complainant after a lapse of more than 10 years on 22.06.2023 along with receipt of occupation dated 20.07.2022. It is the claim of the complainant that in said offer of possession dated 22.06.2023, respondent has failed to mention the amount of delay interest payable to the complainant on account of delay caused in delivery of possession. Since, said offer of possession had to be accompanied with payment of delay interest admissible to the complainant, therefore said offer of possession is not valid and complainant should be entitled to



delay possession charges till date. On the other hand, it has been argued by the respondent that complainant is only entitled to delay possession charges till receipt of occupation certificate since the unit had been ready for taking possession since then and the delay in taking over of possession can solely be attributed to complainant own's violation and respondent should not be held accountable for the same.

Considering the aforementioned rival contentions, it is observed that the main point of contention between both parties is the period for which payment of delay interest should be admissible to the complainant. The complainant in captioned complaint intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

*"Section 18: - Return of amount and compensation 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."*

Possession in this case should have been delivered to the complainant by 24.12.2012. However, the same was delayed



beyond the stipulated time period. Further, as per Section 18 of the RERA Act, in case possession of the unit has been delayed and an allottee intends to continue with the project, then the allottee shall be entitled to payment of interest till handing over of possession. In captioned complaint, fact of the matter is that occupation certificate had been received by the respondent on 20.07.2022. Grant of occupation certificate aptly justifies that the unit qua which the occupation certificate has been granted is ready for possession. However, receiving an occupation certificate does not entirely ascertain that the complainant has become aware of the fact that the unit is in fact ready. It is the duty of the respondent to communicate to the complainant that the unit booked by the complainant has received occupation certificate and is ready for possession, so that the complainant may come forward and take it. In such cases, the receipt of occupation certificate is conveyed to the complainant by way of issuing an offer of possession along with a copy of occupation certificate which is a formal communication on behalf of the respondent to the complainant apprising with regard to completion of unit and status of handover of possession. Up until an offer of possession has been issued to the complainant, the complainant cannot be expected to have the knowledge that



his/her unit is ready and available for possession. This process has to be initiated by the respondent and that is with issuing an offer of possession. Merely receiving an occupation certificate and not communicating the same to the complainant does not tantamount to a proper communication of completion of the unit and allottee cannot be held liable for any delay caused in taking over of possession, in case the same has not been officially communicated by the respondent . Respondent in this case had received occupation certificate on 20.07.2022. Though it is true that as per occupation certificate the unit was ready for taking over of possession by 20.07.2022. However, offer of possession was issued to the complainant after nearly a year, i.e., on 22.06.2023. It is on said date that the complainant came to know that her unit was ready for possession and had received an occupation certificate. Complainant cannot be held accountable for not taking any action after receipt of occupation certificate because of the fact that she was not made aware of the same by the respondent. In support of its argument, learned counsel for the respondent has placed reliance on observations made by Hon'ble Supreme Court in Civil Appeal Nos. 6649--50 of 2018 titled 'M/s Supertech Ltd. Vs Rajni Goyal'. However, the facts and circumstances in that case are different



from the captioned complaint, giving rise to different conclusions. In said matter, an offer of possession had already been issued to the complainant and occupation certificate had been received thereafter. Complainant had both the knowledge of offer of possession and later grant of occupation certificate, making the delay in taking over of possession entirely the fault of complainant. Whereas in this case, complainant was only made aware of the grant of occupation certificate after receiving the offer of possession dated 22.06.2023. Complainant could have only initiated the process for taking over possession after becoming aware of the fact that the unit has in fact been completed. Said date works out to 22.06.2023. Therefore, the contention of the respondent that complainant is entitled to grant of delay interest only till date of occupation certificate cannot be accepted.

Further, with regard to the contention of the complainant that the offer of possession dated 22.06.2023 was invalid due to inadmissibility of delay interest payable to complainant does not hold weight because the amount of delay interest payable to the complainant was under adjudication before the Authority. As on date of offer of possession, i.e., 22.06.2023, the unit in question was complete and the unit had already received

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occupation certificate on 20.07.2022. Authority has laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:

"7. At this stage, the Authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc. from



the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii)

In terms of observations recorded above the unit was complete in all respects and the offer of possession dated 22.06.2023 was a valid offer. Complainant should have completed all the formalities with regard to taking over of possession subject to calculation of delay interest admissible to



the complainant by the order of the Authority. Complainant has failed to justify her non-acceptance of the offer of possession dated 22.06.2023 besides the adjustment of delay possession charges for which she had already approached the Authority by way of filing present complaint. Also otherwise, complainant has failed to highlight any written clause where in it has been specifically mentioned that the offer of possession issued to the allottee/complainant shall necessarily include adjustment of delayed possession charges failing which the allottee/complainant may chose not to accept the same. It is the obligation of the allottee to participate in the process of taking over of possession once the unit is complete and has received occupation certificate. Complainant had become aware of the fact that the unit has been complete and has received occupation certificate on 22.06.2023, i.e., by way of offer of possession. Thereafter, there has been a deliberate delay on the part of complainant to take over possession of the unit, as the offer of possession dated 22.06.2023 was a complete and valid offer. Complainant cannot be allowed to take advantage of her own delay in taking over of possession. Therefore, it is observed that complainant is only entitled to grant of delay interest till date of offer of possession, i.e., 22.06.2023.



14. As admitted by both the parties, a unit had been booked in the project of the respondent in the year 2009. Vide allotment letter dated 24.12.2009 complainant was allotted unit no. H4-17 First Floor, measuring 1022sq. ft. First Floor. No builder buyer agreement has been executed between both the parties. Complainant has paid a total amount of ₹ 23,26,963/- towards the booked unit till November 2012. As per observations recorded in para EI of this order, the possession of the unit should have been delivered by 24.12.2012. Complainant had filed present complaint with the Authority on 04.03.2022 seeking possession of the unit along with delay interest. Thereafter, during the course of adjudication, respondent issued an offer of possession qua the unit on 22.06.2023 along with receipt of occupation certificate dated 20.07.2022. Said offer of possession is a valid offer of possession and the unit is complete in all respects to take over possession of the unit. Admittedly there is a delay of more than 10 years in offering of possession on the part of the respondent from the due deemed date of possession.

15. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated for delivery of possession. The Authority observes that the respondent has failed to fulfil its obligation of delivery of possession within reasonable period of time. In the 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. A valid offer of possession has been issued to the complainant on 22.06.2023. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 24.12.2012 up to the date of valid offer of possession, i.e., 22.06.2023 as per observations recorded in para EIII of this order. 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”..”

16. 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. 05.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
17. 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 from the due date of possession ,i.e., 24.12.2012 till the date of a valid offer of possession, i.e., 22.06.2023. Complainant,



in turn, is directed to accept the said offer and take immediate possession of the unit upon payment of balance payable amount, if any.

18. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 24.12.2012 till the date of offer of possession, i.e., 22.06.2023 which works out to ₹ 26,15,630/- 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 till 22.06.2023 (in ₹)
1.	23,03,3264.5/-	24.12.2012	26,00,149/-
2.	23,699/-/-	27.05.2017	15,481/-
Total:	23,26,963.50/-		26,15,630/-

19. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 23,26,963.50/- , which has also been admitted by the respondent vide statement of accounts dated 14.04.2021 and offer of possession dated 22.06.2023. However, complainant has only attached receipts for an amount of ₹ 20,40,690.27/- out of ₹ 23,26,963.50/-. Complainant has made payment of ₹ 23,03,3264.5/- to the respondent by 26.11.2012 as per the demand letters and receipts annexed in both complaint file and reply which is before the deemed date of possession. Thereafter only a payment of ₹ 23,699/- has been made after deemed date



of possession, i.e., on 27.05.2017. Therefore, both these dates are being taken for the purpose of calculation of interest.

F. DIRECTIONS OF THE AUTHORITY

20. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹ 26,15,630/- (till date of offer of possession dated 22.06.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.
- (ii) Complainant is directed to take possession of the unit within one month from date of uploading of this order and will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her.
- (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, 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



(iv) The respondent shall not charge anything more from the complainant which is not part of the agreement to sell.

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



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



.....
NADIM AKHTAR
[MEMBER]