



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	706 of 2021
Date of filing:	07.07.2021
Date of first hearing:	24.08.2021
Date of decision:	19.10.2023

Babu Lal Agrawal, S/o Sh. Shri Ram Bhagat Agrawal,
R/o House no. 761, Sector A, Pocket-B, Vasant Kunj,
New Delhi, Pin-110070

....COMPLAINANT

VERSUS

M/s Trishul Towers Pvt. Ltd,
Office: 101, First Floor, Rohit House, 3-Tolstoy Marg,
Connaught Place, New Delhi-110001

....RESPONDENT

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

Present: Adv. Nitin Kant Setia, Id. counsel for the complainant,
 through video conference.

Adv. Vivek Sethi, Id. counsel for the respondent, through
video conference.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed on 07.07.2021 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	Palm Residency, Sector-75-76, Faridabad, Haryana.
2.	Flat no.	703, 7 th Floor, Tower-C3
3.	Area	1240 sq. ft. (115.19 sq. mts.)
4.	RERA registered/ not registered	Registered vide registration No. 215 of 2017 dt.18.09.2017
5.	Date of booking	No date mentioned in the application form.



6.	Date of allotment	24.04.2012
7.	Date of Flat/Builder Buyer Agreement	17.08.2012
9.	Deemed date of possession (36+6)	18.02.2016 As per clause 3.5, "developer shall offer possession of the said flat to Buyer within a period of thirty six months (plus a grace period of six months) from the date of execution of this Agreement."
10.	Basic sale price	Rs. 33,91,760/-
11.	Amount paid by complainant	Rs. 28,58,644/-
12.	Offer of possession given	28.09.2017

B. FACTS OF THE COMPLAINT

The complainant has submitted as under:

3. That the complainant booked a flat in February, 2012 in respondent's residential project "Palm Residency, Sector-75-76, Faridabad, Haryana and paid an amount of Rs.2,50,000/- by way of RTGS dt. 27.03.2012, towards the booking of the unit in the said project on 05.04.2012. a receipt of the booking amount was issued by the respondent on 05.04.2012.
4. That the respondent issued an allotment letter in favour of the complainant on 24.04.2012, vide which Flat no.703, 7th floor, Tower-C3, ad-measuring super built up area of 1240 sq. ft. was provisionally allotted



to the complainant subject to due compliance of terms and conditions as contained in the flat buyer's agreement. A copy of allotment letter dated 24.04.2012 is annexed as annexure A-2. Thereafter, Flat Buyer's Agreement was executed on 17.08.2012 between the complainant and the respondent as per which, the total consideration of the said flat was fixed at Rs. 33,91,760/-. As per clause 3.5 of the flat buyer agreement, respondent was under an obligation to deliver possession of the allotted flat within a period of 36 months from the date of execution of Flat Buyer Agreement with a grace period of additional 6 months. A copy of flat buyer agreement is annexed as annexure A-4.

5. That the Flat Buyer Agreement executed between the parties contained such terms and conditions which the complainant disputes in the present complaint to be arbitrary and heavily biased in favour of the respondent. The complainant disputes it by saying that he was not given any exit option if he wished to withdraw from the said project and on the contrary agreement has a forfeiture clause wherein, the respondent would be entitled to forfeit the booking amount, amount paid towards earnest money and non-refundable amounts, in case of failure to make payments on time, without giving any notice or response.

He further submits that as per clause 2.5 of the agreement, in case there is any delay of payment on part of the complainant, the interest charged is 21% on the delayed payment. However, as per clause 3.7, in case of delay



in possession by the respondent, the quantum of compensation is calculated to be at Rs.5/sq. ft. per month for the period of delay, which is too less as compared to the exorbitant 21% rate of interest which the respondent has charges or is charging from the consumers.

6. That the complainant has paid an amount of Rs.28,58,644/- against the total sale consideration of Rs. 33,91,760/-. Copies of receipts are annexed as annexure A-5. The remaining amount is approximately Rs.5 lakhs outstanding whereas the respondent has arbitrarily issued a demand notice mentioning that the complainant is liable to pay Rs.15 lakhs after charging delay interest. Complainant duly submits that the reason behind non-payment of total sale consideration is because respondent failed to act as per the agreement and failed to reach the construction milestone within stipulated time. Complainant submits that as per Section 54 of the Indian Contract Act, he is not obliged to make further payment as there was a reciprocal promise between the complainant and the respondent. Since the respondent company failed to fulfill his obligation to by not completing the construction within time, therefore, this gives him the right to not make further payments.
7. That, cause of action arose when the respondent illegally issued an offer of possession to the complainant vide letter dated 28.09.2017, without having an Occupation Certificate issued in his favour. A copy of offer of possession letter dated 28.09.2017 is annexed as annexure A-9.

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Complainant disputes the said letter being illegal since respondent had only applied for the occupation certificate but the same was issued to him after a gap of 2 years from the date of offer of possession i.e. on 02.04.2019. A copy of occupation certificate is annexed as annexure A-7.

Complainant disputes that the respondent did not apply for the issuance of Occupation certificate before the date of offer of possession, therefore, the said issuance of offer of possession of possession was fraudulent and illegal.

8. That cause of action again arose when the respondent failed to handover the possession on due date, i.e., on 18.02.2016. The complainant submits that the promoter cannot indefinitely defer the delivery of possession after receiving the substantial amount. He is duty bound to deliver the possession within reasonable time and when the time is mentioned in the Agreement executed between the parties, then the respondent is obliged to comply with the duties created in his favour. It is pertinent to mention that as per clause 3.5 of the Flat Buyer agreement, the respondent is duty bound to deliver the possession of the flat within 36 months from the date of execution of the agreement, further extendable by a period of 6 months as a grace period. However, the project was not completed and no reason much less a reason sustainable in the eyes of law was given and no OC has been granted by the competent authority. It is only in April 2019 that OC was issued and a subsequent demand cum possession notice dated



12.04.2019 was given to the complainant along-with a reminder letter dated 06.08.2019. Thus, the demand of delay charges is highly irrational and illegal on the part of the respondent, when he is duty bound to pay the delay charges as mentioned in the agreement itself.

9. That after OC was granted on 02.04.2019, respondent issued a communication dated 12.04.2019 offering possession albeit on payment of an unjustified, unreasonable and exaggerated amount of Rs.15,12,827/-. A copy of the impugned demand cum possession notice dated 12.04.2019 is annexed as annexure A-11. The complainant submits that such demand is illegal, perverse and liable to be set aside. He also submits that respondent has arbitrarily issued invoices for maintenance and holding charges from May, 2019 till March 2021. It becomes clear from the conduct of the respondent that he is exercising his dominant position and making such arbitrary and illegal demands. Copy of the invoices for maintenance and holding charges from May 2019 to March 2021 are annexed with the complaint as annexure A-12.
10. That aggrieved by such illegal demands of the respondent, the complainant contacted the respondent on several occasions for recalling the impugned letter and handing over the peaceful possession of the unit but till date, the said demand has not been recalled rather the respondent threatened the complainant with dire consequences, in case, his demands



are not met. Then neither possession is given, nor has the amount given by the complainant been refunded back to the complainant.

11. That the complainant also submits that the terms of the Flat Buyer Agreement are arbitrary in nature to the extent that as per clause 2.5 of the agreement, in case any due amount/installment remains unpaid for more than 3 months, then the balance amount be refunded to the buyer after deducting 20% of the total sale consideration meaning thereby that the buyer has no right at all to exit from the project and will not be entitled to take any money back due to the above said arbitrary deductions, though the respondent is entitled to charge 21% interest on delayed payment for the period of delay. Complainant submits that such clause proves that the respondent is taking advantage of his dominant position and is thus acting against Section 4 of the Competition Act, 2002. He submits that the precedents on the subject of Builder buyer relations and the rights of the allottees to get the money refunded in the event of delays well recognizes and acknowledges the fact that BBAs are standard form of contracts drafted by the builder which does not offer a level playing field and are heavily leaned in favor of the builder which constitutes an unfair trade practice. He relied on few precedents i.e *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, Neelkamal Realtors Sururban Pvt. Ltd. v. UOI and Others, Sandeep Lohia and Others v. Parsynath Developers (2014), Marvel Omega*



Builders Pvt. Ltd. and another v. Shrihari Gokhale and another, 2019, M/s Fortune Infrastructure and another v. Trevor Dlima & others, 2018, Ajay Enterprises Pvt. Ltd. and Others v. Shobha Arora & anr., 2019, Bangalore Development Authority v. Syndicate Bank, 2007, Kolkata West International City Pvt. Ltd. v. Devasis Rudra, 2019. The rulings in these cases point to the fact that it is highly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession and not be entitled to refund of the amount given to the developer. It is held that where the agreements entered into with individual purchasers are invariable one-sided, standard format agreements prepared by such builders/developers are overwhelmingly in their favor with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. then the individual purchasers do not have scope or power left to negotiate and to accept such one-sided agreements. Such agreement therefore should be declared illegal, arbitrary and unreasonable.

Hence, the present complaint.

C. RELIEFS SOUGHT:-

12. In view of the facts mentioned above, the complainant prays for the following relief(s):-

- a) Take action in terms of section 7(1) of the Act against the promoters of the respondent company for contravening the



provisions of the Act by falsely representing to have obtained the Occupation Certificate in 2017 while the same was granted later in 2019.

- b) Quash the impugned notice/communication dated 12.04.2019 and 06.08.2019, being illegal and beyond the scope of the Act.
- c) Quash the invoices against maintenance and holding charges being illegal and beyond the scope of the Act.
- d) Declare that interest rate @21% charged by the respondent company on delayed payment of installments as contained in clause 2.5 of the Flat Buyer's Agreement is unjustified, arbitrary and illegal;
- e) Direct the respondent to refund the entire amount paid till date, i.e., Rs.28,58,644/- back to the complainant along with interest @10% p.a. from the date of respective payments made till the date of realization.
- f) In the alternative, the respondent be directed to handover the possession of the unit flat no. 703, Tower C-3, 7th floor, Palm Residency, after paying delay penalty on the amount paid by the complainant as there is delay of more than 5 years and refund of interest charged over and above 10% on delayed payments.;
- g) Direct the respondent to pay compensation of Rs.5,00,000/- on account of mental agony and harassment;



- h) Any other relief/direction which the complainant is entitled under the Real Estate (Regulation and Development) Act of 2016 and the Haryana Real Estate (Regulation and Development) Rules of 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 08.07.2022, contesting the complaint on the following grounds:

13. That in the reply, respondent denies each and every averment or allegation made by the complainant, in the complaint. He submits that the present complaint is not maintainable as complainant has not come with clean hands and has concealed the material fact from this Hon'ble Authority.
14. That at the time of execution of Flat Buyer Agreement dated 17.08.2012, between the complainant and the respondent company, it was specifically mentioned that the Flat is being booked by the complainant in the project whose licence was granted by Director, Town and Country Planning, Haryana to M/s Anushree Home Developers Pvt. Ltd. The said developer executed a GPA dated 30.04.2012 in favour of respondent company to execute allotment letters, flat buyer agreements, conveyance/sale deeds and any other document for transfer/sale of the said flats to any other person and to receive consideration thereof and to issue receipts, registration of transfer/sale deeds, manage and control said land for the



purpose of overall development and construction of said land in accordance with law and norms laid down by government, obtain government approvals/sanctions, water, sewerage and electricity connections, obtain electricity approvals, fire NOC, Occupation Certificate etc. Copy of General Power of attorney dated 30.04.2012 is annexed as annexure R-2.

15. That the complainant had booked the Unit/Flat in the respondent's project merely for investment purpose and he never intended to be the end user in the project, which is why when he saw slowdown in the real estate market, apprehending not to earn expected profit on investment is now avoiding to take possession of the said unit for one reason or the other and pressurizing the company for refund of his deposited amount, which is not correct on facts of the case, as the respondents have invested the said amount on the Project.
16. That the deemed date of possession of the said unit/Flat was 17.02.2017. Respondent has also submitted that the complainant has paid Rs.22,50,343/- excluding service tax and VAT charges of Rs.2,08,698/- and EDC/IDC Rs.4,03,000/- and not Rs.28,58,644/- as per the complainant's submission in the complaint. He submits that as per clause 3.6 of the flat buyer agreement, the period of possession can be further enhanced due to force majeure conditions including act of government and government departments.



17. That the respondent disputes the timely payment of amounts towards the said flat as per the payment schedule by the complainant. He submits that the complainant failed to make the payments as per the payment plan, as per which they were obliged to pay balance sale consideration at the time of possession. Accordingly, when the offer of possession was made on 06.04.2019 (annexure R-8), the complainant was also requested to pay the balance sale consideration of Rs.13,70,314/-. However, he neither came to take the possession nor made the required payment of the said flat/Unit which is lying vacant and ready for possession on making payment of the remaining dues. It is pertinent to note that upon payment of balance dues only, conveyance deeds could be executed before the concerned registrar office in the name of the complainant.
18. That the offer of possession was made only after applying for the occupancy certificate and the delay in granting the Occupancy Certificate can be attributed to the competent authority that was to grant it and made an inordinate delay in granting the same, which was received only on 02.04.2019. Photographs of the completed project have been attached as annexure R-6, depicting proof of the construction duly completed. Thus, as per the assertions made by the respondent, construction was complete till the year 2015 and Occupation Certificate was applied with the concerned Authority on 27.04.2017. All approvals were taken from the concerned departments qua the completion of the project prior to



27.04.2017 except non completion of EWS flats due to which Occupation Certificate was not granted for approximately two years.

19. That the respondent asserts that they were not able to complete the project on time, due to the fact that the various allottees like the complainant did not follow the financial discipline/ schedule as agreed by them when they executed their respective Flat Buyer Agreements.
20. That the respondent is always ready and willing to handover possession of the unit to the complainant upon payment of dues as per the account statement of the company. But the complainant never intended to take the possession of the said flat as upon receiving the offer of possession again on 08.04.2019, the complainant vide e-mail put a condition upon the respondent that he will take possession only on payment of interest on delayed possession and compensation of Rs.5,00,000/-. This is despite the fact that there was outstanding amount from the respondent running into lakhs.
21. That several reminders were sent to the complainant demanding payments but on not receiving any reply to those, respondent had to send a Legal notice on 17.03.2020 (annexure R-9), calling upon the outstanding payment of Rs.15,89,699/-. Complainant sent a reply to the said notice vide letter dated 24.09.2020 (annexure R-11) and admitted that respondent had on earlier occasions also adjusted outstanding



delayed payments towards principal and interest running into lakhs. Further, denying any pending dues before him.

Thus, the respondent in his reply asserts that he is always ready and willing to give the possession, subject to the payment of the pending dues by the complainant and that the complaint has been filed with malafide intention which deserves to be dismissed with exemplary costs on account of selectively placing on record documents and that too with ulterior motive.

E. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

22. During oral arguments learned counsels for the complainant and respondent reiterated the arguments as mentioned at Para 3 to 11 and para 13 to 21 of this order respectively which are not being repeated for the sake of brevity of this order.

F. ISSUES FOR ADJUDICATION

23. Whether the complainant is entitled to relief of possession of residential unit booked by him along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY THE COMPLAINANT AND OBJECTIONS RAISED BY RESPONDENT

Findings on the objections raised by the respondent.

A handwritten signature in blue ink, appearing to be 'Rad', with a horizontal line underneath it.

G.I Objection regarding Builder buyer agreement which is alleged by the complainant to be unfair and arbitrary.

The complainant in the complaint filed by him disputes the BBA executed by him on 17.08.2012 to be unfair and arbitrary with its terms being alleged to be one-sided. The respondent disputes the said agreement to be fair and legal and asserts that when the agreement was signed, it was with consent of both the parties. Had the terms been arbitrary, the complainant was at liberty to not sign the said agreement. It is asserted by the complainant that he had unequal bargaining power.

Authority observes that since BBA constitutes the sole basis of subsisting relationship of the parties, both the parties are lawfully bound to obey the terms and conditions enunciated therein. Respondent had raised each specific demand strictly in consonance with the payment plan opted and agreed at the stage of booking as well as within the ambit of the clauses agreed and accepted by the complainant at the time of execution of BBA. Complainant after thorough reading and understanding of the terms and conditions as mentioned in the BBA, signed the agreement that too without any protest and demur. It is pertinent to mention here that the agreement was executed prior to coming in force of Real Estate (Regulation and Development) Act, 2016 (RERA Act in brief). Therefore, agreement



executed prior to the coming into force of the Act or prior to registration of project with RERA cannot be reopened.

G. II Objection regarding offer of possession which is disputed by the complainant to be illegal and illegitimate.

Authority observes that it is a matter of admittance by the complainant as well as the respondent that Occupation Certificate stands issued on 02.04.2019, while offer of possession was first made on 28.09.2017, approximately 2 year prior to the issuance of letter of possession. Therefore, the said offer of possession is held to be invalid as the possession should not have been handed over to the complainant without obtaining occupancy certificate 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.

G. III. Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 3.5 is 18.02.2016, 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? The obligation to deliver possession within a period of 36 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the reason given by the respondent is inordinate delay in granting the occupancy certificate by the competent Authority 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. In act respondent company applied for the grant of occupancy certificate vide application dated 27.04.2017, i.e., after passing of the deemed date of possession. Further, respondent in Para no. 24 of the reply has himself accepted that *“all approvals from the concerned departments qua the project in question were taken prior to 27.04.2017, except non-completion of EWS flats. This resulted in non-grant of occupation certificate by Authority for approximately two years.”*

It is the policy of the Town and Country Planning Department that occupation certificate in case of group housing projects is granted upon completion of proportionate EWS units. Thus the plea of



respondent that delay in completion of the project is caused due to delay in granting of occupancy certificate by the competent Authority has no merits. Hence, rejected.

Further, 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.

G. IV. Objection raised by the respondent regarding maintenance charges being legal and valid.

The issue w.r.t. maintenance charges are referred to by the complainant allottee. As the agreement has been entered into before the coming into force of the Act, the matter is to be dealt with as per the provisions of the BBA. The Authority observes that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund the operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. The same has been observed by the



Telangana State Consumer Disputes Redressal Commission in its Judgement dated 21.01.2021 while deciding an appeal filed by India Bulls Centrum Owners Welfare Cooperative Society, which maintains a gated community at lower Tank Bund, in Hyderabad.

Thus, the Authority is of the view that the respondent is entitled to collect advance maintenance charges as per the builder buyer's agreement executed between the parties. However, the period for which maintenance charges levied should not be arbitrary and unjustified. Generally, maintenance charges are charged by the builder/developer for a period of 6 months to 2 years. The authority is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since, the developer has already received the OC and it is only a matter of time that the completion of the project shall be achieved, its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the maintenance charges is handed over to the RWA. Clause 5.2 of the agreement stipulates that *"these charges shall be payable with effect from expiry of thirty days from the date fo offer of possession of said flat by the developer to buyer, whether buyer takes possession or not and whether buyer use the flat or keep it vacant...."*



Keeping in view the facts above, the Authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

G. V. Objection raised by the respondent regarding holding charges being legal and valid.

The complainant has also challenged the authority of the respondent builder to raise demand by way of holding charges on the ground that the project is incomplete and the offer of possession is not lawful. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer's agreement. The Authority observes that this issue already stands settled by the Hon'ble Supreme Court vide its judgment dated 14.12.2020 passed in Civil Appeal No. 3864-3889/202, whereby the Hon'ble Court had upheld that the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are



payable by the allottee to the developer. The relevant para of the committee report is reproduced as under:

"F. Holding Charges: The Committee observes that the issue already stands settled by the Hon'ble Supreme Court vide Judgement dated 14.12.2020 in civil appeal no 3864-3889/2020 hereby the Hon'ble Court had upheld the order dated 03 01 202 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer The Marble Authority may kindly issue directions accordingly."

As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the flat. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

In the light of the judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the Authority decides that the respondent promoter cannot levy holding charges on a allottee(s) as it does not suffer any loss on account of the allottee(s) taking possession at a later date even due to an on-going court case though it would be



entitled to interest at the prescribed rate for the period the payment is delayed. Thus, complainant is entitled to refund of the holding charges, if already paid.

G. VI. Objection raised by the respondent regarding compensation payable to the complainant.

The complainants are seeking compensation for legal costs and on account of mental and physical harassment caused to the complainant for loss and mental agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



24. The facts set out in the preceding paragraph demonstrate that possession of the project had been delayed beyond the time period stipulated in the buyer's agreement. The Authority observes that the respondent has failed to fulfil its obligation stipulated in BBA dated 17.08.2012. Possession of the unit should have been delivered by 18.02.2016. Now, even after a lapse of 7 years, respondent has not offered a valid offer of possession of the unit and has in fact been demanding further payments in lieu of maintenance and other charges. Complainant, however, does not wish to withdraw from the project and is rather interested in getting the possession of his unit. 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. The respondent in this case has not made any valid offer of possession to the complainant till date duly supported with payables and receivables. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 18.02.2016 up to the date on which a valid offer is sent to him. 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(z) 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..”

25. 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.19.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
26. 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 30.04.2016 till the date of a valid offer of possession.
27. Authority has got calculated the interest on total paid amount from due date of possession, i.e., 18.02.2016 till the date of this order, i.e., 19.10.2023 which works out to ₹23,58,243/- and further monthly of ₹26,100 /- 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 19.10.2023 (in ₹)
1.	2,50,000/-	18.02.2016	2,06,238/-
2.	2,50,000/-	18.02.2016	2,06,238/-



3.	2,40,000/-	18.02.2016	1,97,988/-
4.	3,84,931/-	18.02.2016	3,17,550/-
5.	3,33,713/-	18.02.2016	2,75,297/-
6.	4,00,000/-	18.02.2016	3,29,981/-
7.	3,23,042/-	18.02.2016	2,66,494/-
8.	26,958/-	18.02.2016	22,239/-
9.	90,960.50/-	18.02.2016	75,038/-
10.	2,59,039.50/-	18.02.2016	2,13,695/-
11.	1,81,736/-	18.02.2016	1,49,923/-
12.	1,18,264/-	18.02.2016	97,562/-
Total:	28,58,644/-	-	23,58,243/-
Monthly interest:	28,58,644/-	-	26,100/-

28. It is pertinent to mention that complainant has claimed to have paid an amount of ₹28,58,644/- vide receipts annexed as Annexure A-5 from page no.82-93.

H. DIRECTIONS OF THE AUTHORITY

29. 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 ₹ 23,58,644/- (till date of order i.e., 19.10.2023) to the complainant



towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 26,100/- till the offer of possession after receipt of occupation certificate

- (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 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) Impugned notice dated 12.04.2019 and 06.08.2019 are illegal.
- (v) Invoices against maintenance charges are valid and must be paid after possession is duly offered by the respondent. In respect of holding charges, such demand is declared to be arbitrary and illegal.
- (vi) Offer of possession given vide letter dated 28.09.2017 is hereby quashed as it being illegal and invalid.
- (vii) Respondents are directed to modify the demand letters issued to the complainant.
- (viii) The respondent shall not charge anything from complainant which is not part of the agreement.



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



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DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]