



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2689 of 2022
Date of filing.:	20.10.2022
First date of hearing.:	21.12.2022
Date of decision.:	22.10.2024

1. Mrs. Savita W/o Sh. Anil Grewal
2. Anil Grewal S/o Sh. Hoshiyar Singh
Both R/o H.No. 2, O-Block, New Roshanpura Najafgarh,
Delhi-110043

....COMPLAINANTS

VERSUS

Ruhil Promoters Private Limited
Office at Sector-3 Bahadurgarh,
District Jhajjar-124507 (Haryana)

...RESPONDENT

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Present: - Adv. Sudeep Singh Gahlawat, Learned counsel for complainant

Adv. Kamal Dhaiya, Learned counsel for respondent

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 20.10.2022 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to 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 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.	Ruhil Residency, Sector-3, Bahadurgarh
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Registered – 139 of 2017
4.	Details of unit.	II-801, Block-II-1, measuring super area of 1250 sq. ft. and built area of 854 sq.ft



5.	Date of floor/builder buyer agreement	25.05.2013
6.	Due date of possession	25.11.2016
7.	Possession clause in BBA (Clause 9.1)	Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, Noes etc., the developer proposes to complete the construction within a period of 36 months from the date of execution of this agreement with grace period of 180 days under normal circumstances.
8.	Total/Basic sale consideration	₹40,50,000/-
9.	Amount paid by complainant	₹36,75,562/-
10.	Physical possession taken on	17.01.2024

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANTS IN THE COMPLAINT:

3. The case of the complainants is that complainants had booked an apartment bearing no. H-801 in Block H-1 in respondent's project, "Ruhil Residency", Bahadurgarh" in the year 2013. Complainants alleges that they had paid an amount of ₹ 36,75,562/- against the total sale consideration of ₹ 40,50,000/-. As evidence of paid amount, complainant has annexed

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Annexures P-3 at page no. 45- 57 of complaint. As per agreement dated 25.05.2013, respondent had committed to deliver possession of the unit within 36 months along with grace period of 180 days i.e, 42 months from the date of execution of agreement, which comes to 25.11.2016. In support of this contention he has annexed a copy of agreement at page no. 20-44 of complaint book. Since inordinate delay of eight years from the deemed date of possession have already been occurred however respondent has not given possession to the complainants. Complainants have prayed for possession of the unit along with delay interest. Further, from booking of the unit till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. The respondents were bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed for seeking relief of handing over possession of booked unit along with delay interest as prescribed as per RERA Act, on the already paid amounts by complainants



from the deemed date of possession i.e. 25.11.2016 till the actual physical delivery of possession.

C. RELIEF SOUGHT

4. That the complainants seeks following relief and directions to the respondents:-
 1. In exercise of powers under Section 35, direct the respondent to place on record all statutory approvals and sanctions of the project.
 2. Direct the respondent to deliver immediate possession of the booked along with prescribed rate of interest as per the RERA Act, on the amount already paid by the complainants from the promised date of delivery i.e. 25.11.2016 till the actual physical delivery of possession.
 3. Restrain the respondent from charging any amount on account of GST because possession of the flat was to be delivered before 25.11.2016 and implementation of GST across the country was on 1.07.2017. therefore complainants was not liable to bear heavy cost on account of GST.
 4. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act, 2016 and the


P. K. Pathee

D. SHORT REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Learned counsel for the respondent filed short reply on 19.09.2023 pleading therein:

Respondent has admitted allotment and execution of floor buyer agreement in favour of complainants. It is stated in the reply that in terms of builder buyer agreement (herein after referred as BBA) dated 25.05.2013 respondents had proposed to handover the possession of the unit within a period of 36 months along with a grace period of 180 days from the execution of BBA. Case of the respondent is that the application for grant of Occupation Certificate was filed by respondent-promoter on 13.01.2020 with concerned department, which was kept pending with the department and also got delayed due to Covid-19 situation as national lockdown was announced in the entire country. On 17.03.2022 Occupation Certificate was received by the respondent from the concerned department. Respondent submitted that force majeure on account of Covid-19 outbreak for relaxation be taken into consideration as Covid-19 outbreak lead to delay in handing over of possession, thus, the Covid-19 period may be taken as zero period for the purpose of calculation of delay possession interest. Secondly, time taken by

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Complaint no. 2689 of 2022 department since year 2020 for grant of occupation certificate be also taken as one of the force majeure, since respondent had no control over time taken by department allowing to issue Occupation Certificate. Furthermore, project is complete in all respects. to support this respondent referred to report submitted in complaint no. 413/2022 by local commissioner, whereby it is stated that project is complete in all respects.

7. Lastly, respondent stated that complainants had not approached this Authority with clean hands, since complainants had concealed that complainants were informed of completion of project and receipt of occupation certificate and complainants were also requested to make payment of outstanding amounts. However complainants termed said demands as illegal and refused to make payments. In this way, complainants had violated Section 19(10) of the RERA Act, 2016 for not taking possession after issuance of offer of possession letter.
8. Respondents further stated complainants had mentioned in complaint that an amount of ₹ 36,75,562/- has been paid by them till date, however sum total of receipts attached along with complaint comes to ₹ 36,52,386/-.

E. ISSUES FOR ADJUDICATION


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9. 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?

FINDINGS AND OBSERVATIONS OF THE AUTHORITY

10. On perusal of file Authority observes that captioned matter was heard at length on last date of hearing i.e. 09.07.2024 and case was fixed for pronouncement of judgment for today. Relevant part of the order is reproduced below:

“1. Learned counsel for complainant apprised the Authority that in compliance of last order dated 21.09.2023, complainant had taken physical possession on 17.01.2024 of the booked unit. Now, only issue left for adjudication is interest for the delay caused in handing over possession. He further stated that as per agreement executed between parties on 25.05.2013, respondent was under an obligation to handover possession by 25.11.2016. However, complainant has taken physical possession on 07.01.2024 from respondent. Since, there is delay of 8 years in handing over possession, delay interest for said period be granted to complainant.

2. Sh. Kamal Dahiya, counsel for respondent stated that respondent had applied for grant of Occupation Certificate on 13.01.2020 and same was obtained on 17.03.2022 from the concerned department. He stated that due to Covid-19 pandemics, occupation certificate was delayed, therefore, said delay period be considered as Force Majeure. Respondent counsel also requested the Authority that burden of payment of interest for the period from the date of application of Occupation Certificate i.e., 13.01.2020 till grant of Occupation Certificate i.e. 17.03.2022 must not be put on the respondent as said delay has been caused without any fault of respondent. Further, respondent is ready to pay



delay interest from the Year 2016, when possession was promised to be offered, till the Year 2020, when Occupation Certificate was applied by the respondent.

3. On hearing, learned counsel for both the parties, Authority observes that at the time of filing of present complaint, complainant had two main grouse. Firstly, with regard to receivable and payable. Secondly, delay in delivery of possession of the unit booked by the complainant. As admitted by counsel for complainant, physical possession of the unit has taken over by complainant on 17.01.2024. However, issue with regard to delay interest for the delayed possession is yet to be decided. In this regard, complainant counsel was asked whether or not respondent had issued fresh statement of account along with possession, if any, complainant may mention the objections with regard to the same. Complainant counsel stated that complainant has received the statement of account, however delay interest is the reflected in the said statement of account. Further he stated that complainant do not wish to file any other document or objections with regard to fresh statement of account. He prayed before the Authority to pass order on merit with respect to delay interest."

Findings on the objections raised by the respondent.

11. Objections raised by the respondent with regard to allowing delay interest for the delayed period of possession:

Delay in project due to two force majeure conditions:

Admittedly, respondent had failed to deliver possession within the period stipulated in the BBA dated 25.05.2013 i.e was 36 months along with grace period of 180 days from the execution of BBA, which comes to 25.11.2016. Hence, admittedly there is a delay on the part of the responden Various reasons have been stated by the respondent such as Covid outbreak and time taken by department in issuing occupation


G. Rathee

certificate etc that has caused delay in handing over possession have been dealt with below:

i. 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 septemeber,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.”

As per the Builder Buyer's Agreement respondent promoter was obligated to handover possession by 28.11.2016,whereas admissibility Occupation Certificate was obtained, almost after 4 years on lapse of deemed date of possession. 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.

ii. **Time taken by department in issuing occupation certificate:** In this regard Authority observes that as per Builder Buyer Agreement executed between parties on 25.05.2013, respondent was under an obligation to hand over possession by 25.11.2016, however respondent has admitted that application for grant of occupation certificate was filed on 13.01.2020, and the same was issued by competent Authority on 17.03.2022, respondent has assured that since delay was on part of said department from 13.01.2020 till 17.03.2022, therefore said period be counted as zero period for the purpose of calculating delay interest. In this regard, Authority observes that as person respondent has committed to deliver the possession of the unit by 25.11.2016, meaning thoroughly that respondent should have applied and obtain the Occupation Certificate on 13.01.2020 i.e. after lapse more of the 3 years and same was issued on 17.03.2022. Furthermore, respondent has taken a defence that the period for which the Occupation Certificate was pending before the competent Authority be excluded for the delayed period as the delay in issuance of Occupation Certificate is appributable to the competent Authority and not the respondent. In this regard Authority observing that there is no document on record to show that the application



for Occupation Certificate was complete as in all aspects and there was no deficiency in the application that was conveyed to them. Authority deserves that in case on application for Occupation Certificate is complete in all aspects and if no deficiency is conveyed to a promoter it qualifies, to be a case of deemed approval. If so, why did the respondent waited for 2 years for approval and not communicated to the (Competent Authority that their Occupation Certificate application is deemed approved.

12. Findings on the relief no. 02 sought by the complainants i.e., to direct the respondent to handover possession of booked unit along with delayed possession interest at the prescribed rate of interest as per RERA Act, 2016 from the promised date of delivery of possession i.e. 02.03.2014 till the actual handing over of legal valid possession.

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

“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”.



- ii) Clause 9.1 of BBA provides for handing over of possession and is reproduced below:-

Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, Nocs etc., the developer proposes to complete the construction within a period of 36 months from the date of execution of this agreement with grace period of 180 days under normal circumstances.

It is the argument of ld. counsel for complainants that after delay of almost eight years respondent had failed to fulfill his obligation to hand over legally valid possession of booked unit to complainants. Now, on 17.01.2024, respondent had handed over possession to the complainants along with copy of occupation certificate and fresh Statement of account. Therefore, complainant's relief with regard to delay interest from deemed date of possession i.e. 25.11.2016 till the dated 17.01.2024 be allowed in favour of complainants.

Per contra, respondent had taken plea that possession was offered to the complainant after receipt of occupation certificate on 17.03.2022. However, complainant never came forward to take the possession. On perusal of short reply filed by respondent, it is revealed that respondent had not annexed copy of offer of possession along with reply, mere pleadings cannot be taken as true until respondent support the same with documents. Learned counsel for respondent on last date of hearing had



also stated that respondent is ready to pay delay interest from 25.11.2016 till 13.01.2020. After 13.01.2020 till 17.03.2022, respondent had prayed for force majeure on two accounts which are already dealt with and rejected by Authority in the preceding paragraphs. Further, complainants have admittedly taken physical possession on 17.01.2024.

Considering above facts and considering the situation that complainants had taken over the possession on 17.01.2024, 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 respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed till actual handing over of possession i.e. 17.01.2024. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date i.e., 25.11.2016 up to the date on which a valid possession was handed over to the complainants i.e. 17.01.2024 after receipt of occupation certificate. 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:

(z) "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”..”

13. 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 of handing over of possession i.e., 17.01.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. **11.1%**.

14. 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 on date 17.01.2024 works out to **11.1%** (9.10% + 2.00%) from the due date of possession i.e. 25.11.2016 till the date of a handing over of possession i.e. 17.01.2024.
15. **Findings on other reliefs sought by the complainants i.e. relief no. 3 at page 13 of complaint book:** Complainants stated that as per relief no.3 complete the respondents be restrained from charging any amount on account of GST, Authority is of the view of that GST became applicable from 1st july 2017, then GST i.e. after the deemed date of possession i.e. after 25.11.2016. had the respondent handed over possession within the stipulated time GST would not have into payable. Authority is considered that an allottee cannot be burden with the taxes which applicable after the deemed date of possession. Authority cannot be burdened with taxes that became applicable due to delay/default of the respondent promoter. Nevertheless, complainant shall



remain obligated to pay all taxes as applicable on the deemed date of possession i.e. 25.11.2016

16. Authority has got calculated the interest on total paid amount from due date of possession i.e. 25.11.2016 till the date of actually handing over of possession i.e. 17.01.2024 which works out to ₹29,17,390 /- 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 17.01.2024 (in ₹)
1.	36,75,562	25.11.2016	₹29,17,390/-

F. DIRECTIONS OF THE AUTHORITY

17. 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 ₹ 29,17,390/- (till date of handing over of possession i.e. 17.01.2024) to the complainants towards delay already caused in



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handing over the possession within 90 days from the date of this
order.

- (ii) The respondent shall not charge anything from the complainants
which is not part of the agreement to sell.

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


.....
CHANDER SHEKHAR
[MEMBER]


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