



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	91 of 2019
Date of filing:	15.01.2019
Date of first hearing:	20.02.2019
Date of decision:	21.10.2024

Nidhi Jain, W/o Sh. Vikas Deep Jain, R/o 2325, Sector-15, (11), Sonapat,
Haryana

....COMPLAINANT

VERSUS

1. M/s TDI Infrastructure Ltd., (A Private Limited Company), through its
M.D. / Chairman, 9, Kasturba Gandhi Marg, New Delhi-110001,

2. The Cannes Property Management Services Pvt. Ltd., (A Private Limited
Company), through its M.D. / Chairman 10, Shaheed Bhagat Singh Marg,
Gole Market, New Delhi-110001,

....RESPONDENT(S)

CORAM: **Nadim Akhtar** **Member**
 Chander Shekhar **Member**

Present: - Mr. Vikas Deep, Counsel for the complainant
 Mr. Shubhnit Hans, Counsel for the respondents

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 15.01.2019 by the complainant under
Section 31 of the Real Estate (Regulation & Development) Act, 2016

(for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

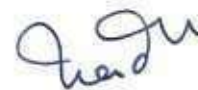
2. Particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	TDI City, Kundli, District Sonipat, Haryana
2.	RERA registered/not registered	Not registered.
3.	DTCP License no.	739 of 2006
4.	Licensed area	7.5 acres
5.	Unit no.(plot)	II-786
6.	Unit area	250 sq. yds
7.	Date of booking	26.08.2005 by paying Rs 1,87,500/- by the original allottee Mrs. Pushpender Kaur

8.	Date of allotment	13.02.2006 in favour of second allottee namely; Ajay Rastogi & Shalav Rastogi
9.	Date of endorsement in favour of complainant	04.10.2011
10.	Date of builder buyer agreement	Not executed
11.	Due date of offer of possession	Not available.
12.	Possession clause	Not available.
13.	Total sale consideration as per final account statement attached as Annexure C-6.	₹ 17,43,050.40/-
14.	Amount paid by complainant	₹ 17,95,360/- Complainant in its complaint has not specifically stated the total paid amount except basic sale price of ₹ 15,44,634/-. However, as per statement of account dated 05.09.2011 annexed at page no. 27 of complaint, total paid amount comes to ₹ 17,95,360/-. Said amount is taken as final for purpose of calculation of interest.
15.	Part completion certificate	18.11.2013

B. FACTS OF THE COMPLAINT

3. That the original allottee named Smt. Pushpender Kaur had booked a plot having an area of 250 sq.yards (approx.) in project-"TDI City" at Kundli, Sonapat, Haryana by paying booking amount of Rs.1,87,500/-, against which receipt no.R-2/321 was issued on 26.08.2005. Copy of receipt dated 26.08.2005 is annexed as Annexure-C1.
4. That the rights against the booking were purchased jointly by Mr. Ajay Rastogi and Mr. Shalav Rastogi, names of said allottees were transferred in the record of respondent No. 1. Accordingly, vide Letter of Allotment dated 13/02/2006, the plot No.786, in block 'H' at "TDI City" at Kundli, Sonapat was allotted. A copy of Allotment Letter dated 13-02-2006 is annexed as Annexure-C2.
5. That the plot in question was finally purchased by the complainant in August- September 2011. Now the parties, i.e., seller and purchaser, contacted the respondent No.1 for transferring the entries of bookings and plot on 03.09.2011. But the respondent No.1 told the parties to deposit the maintenance charges with respondent No.2 and also to obtain the NOC from the respondent No.2, which is subsidiary/sister concern of the respondent No.1. Hence, the parties were compelled to deposit the maintenance charges of Rs.5785/-, against Receipt dated 03.09.2011, till the period of March 2012, with respondent No.2. The copy of Receipt and NOC (paid By Ajay Rastogi), issued by respondent No.2 was produced by the parties before



respondent No.1. Copies of Receipt and NOC dated 03.09.2011, issued by respondent No.2 are annexed as Annexure-C3 & C4, respectively.

6. That such demand of maintenance charges is illegal on many aspects. The alleged demand on account of maintenance charges cannot be raised in respect to plotted colony as per the Act and as per settled law. Nowhere the Law of Land allows or stipulates that the maintenance charges can be charged for a plotted colony. However, the same were deposited by the parties for want of transfer of plot, in the record of respondent No.1.

7. That the Respondent No.1 informed to deposit the amount of Rs.10,000/- as miscellaneous charges on account of registration of Conveyance Deed and also Interest free maintenance security of Rs.20,000/-. The same were also deposited as there was compulsion of getting the plot transferred in favor of complainant. This amount is duly reflected in the Final Statement of Account dated 05.09.2011, issued by the respondent No.1.

8. This Final Statement of Account dated 05.09.2011 (Annexure- C5) reflects that, apart from the maintenance charges of Rs.5,785/-, the following amount is lying deposited against the plot in question.

a) Entire BSP of Rs.15,44,634/-, ($251.16 \times 6150 = \text{Rs.}15,44,634/-$), as the plot area was finally of 251.16sq.yards.

b) EDC/enhanced EDC of Rs.4,17,533/-

c) IDC of Rs.15,070/-

d) Service Charges of Rs.5,770/-



e) Miscellaneous charges of Rs.10,000/- on account of registration of Conveyance Deed

f) Interest free Maintenance Security of Rs.20,000/-

9. That again on the pretext of transferring the entries in its record, the Respondent No.1 further demanded the following amount:-

a) Rs.95,077/- as interest on account of delayed payments of BSP/PLC.

b) Rs.11,357/- as interest on EDC amount.

c) Rs.37,664/- as Transfer Charges.

d) Rs.3880/- as Service Charges.

10. That the interest imposed on BSP / PLC and also on EDC is illegal. It is only the respondent No.1 who delayed the development of the project. Hence, the respondent No.1 cannot charge such amount of interest. Further the transfer charges are also termed as illegal and un-justified. However, under compelling circumstances, the selling and purchasing parties had to deposit the demanded amount vide receipts dated 12-09-2011 (total 4 in number) and the Statement of Account dated 12-09-2011, reflecting such payments are annexed as Annexure-C7 to C11, respectively.

11. That only after depositing the entire amount as stated above, the entries in respect to the plot in question were transferred and endorsed by respondent No.1 on 04/10/2011. The endorsement is marked as "A" upon Annexure-C.1.



12. That thereafter, the complainant repeatedly requested the respondent No.1 to execute the Conveyance Deed in respect to the plot and also to provide the copy of Completion Certificate of the colony. However, Respondent No.1 neither offered the execution of Conveyance Deed, nor supplied the copy of Completion Certificate. No such letter was ever served by the Respondent No.1 for offering the registration of Conveyance Deed. Rather, the complainant had been waiting for the same.
13. That the respondent No.1, for the first time, served letter dated 16-02-2017 (Annexure-C12), wherein, they tried to shift their fault upon the plot holder. The letter in question is titled as "Final Reminder". By this letter, the Respondent asked to get the Conveyance Deed registered. The complainant has no objection to such offer rather the same is much required and the complainant had been persistently requesting the Respondent for registration of Conveyance Deed. It is completely illegal to say that any holding charges can be imposed. However, this letter dated 16-02-2017 was issued without obtaining any mandatory Completion Certificate.
14. That the complainant contacted Respondent No.1 for purpose of getting the Conveyance Deed registered. The complainant also requested the respondent No.1 to supply the copy of Completion Certificate in respect to the block where the plot is situated, but the respondent No.1 did not supply any such mandatory Completion Certificate. The office bearers of respondent No.1 told the complainant that apart from the Stamp Duty



charges, complainant also need to pay Rs.50,000/- towards club membership and Rs.53,200/- as maintenance charges, stated to be due as on that date. The charges on account of Stamp Duty, the same is not disputed, being the statutory charges, but the demand of Misc. Charges, Club Membership Charges and Maintenance Charges are illegal in the following manner:-

- a) The miscellaneous charges are illegal and cannot be imposed. However, the same were already deposited. A seller of the property cannot claim such charges, for the registration of Conveyance Deed as the registration of Conveyance Deed is statutory obligation of the respondent.
 - b) The club membership charges, cannot be compelled and imposed as the Respondents cannot compel the complainant for such charges and cannot be allowed to do the monopolistic trade practice and hence, such demand is illegal.
 - c) On account of maintenance charges, the respondent No.1 told the complainant that the same be deposited with its own subsidiary/sister concern, i.e., respondent No.2. Such demand is illegal on many aspects. The alleged demand on account of maintenance charges cannot be raised in respect to plotted colony as per the Act and as per settled law.
15. That in this way, the offer for registering the Conveyance Deed was nothing but only a moon shine and issued to cover its own faults because by this time when such offer letter was issued, the respondent failed to obtain the mandatory completion certificate, despite the lapse of more than 12 years



of booking. Hence, it was offered without obtaining mandatory completion certificate; and the respondent refused the same until and unless the illegal demand stated above is not deposited by the complainant.

16. That the Respondent is liable to refund the following amount already received under compulsion, as stated above:-

- a) Rs.10,000/- towards Miscellaneous Charges;
- b) Rs.20,000/- towards Interest Free Maintenance Security;
- c) Rs.37,664/- as Transfer Charges;
- d) Interest of Rs.95,077/-.

All such amount were taken illegally and under coercion which the Respondent is liable to refund with interest @ 18%. All such amount is neither statutory nor agreed and hence, the Respondent is liable to refund this amount to the complainant.

17. That the complainant had served upon a legal notice dated 27.02.2017 but the Respondent neither complied nor even replied the same. The legal notice dated 27-02-2017 is annexed as Annexure-C13.

18. That even after passing of more than twelve years, respondent has not completed the project and has not obtain the Occupation Certificate. Hence, they were not able to hand over valid possession of the plot, as the same has not been completed even after passing of 13 years of the booking.



19. That on the other side, the respondent No.2 continued raising the illegal demands towards maintenance charges which are not maintainable, as stated above.

20. That the fact that the project could not be completed in the stipulated time was either within their contemplation or it was reasonably foreseeable by them from the very threshold stage as the statutory approvals and clearances were not obtained by them. The Act of respondent in concealing this fact, amounts to "suppresio-veri". From the very beginning it was in their knowledge that the project has been inordinately delayed yet they never informed the plot holders including complainant, of the factum of delay at any point of time and rather extracted the entire payment from them. In the said circumstances, the action of collecting the money is absolutely fraudulent and unwarranted which has rendered the respondent liable for the statutory compensation, on amount deposited from their respective deposits till possession of plot.

21. That the complainant had previously filed Complaint Case No.159 dated 06/04/2017, before the Ld. District. Consumer Disputes Redressal Forum, Sonapat. The same was withdrawn for want of pecuniary jurisdiction, vide order dated 02/11/2017. Further the Complaint No.774/2017 was filed before Hon'ble State Consumer Disputes Redressal Commission, Haryana at Panchkula but the same was also withdrawn vide order dated 30/10/2018.



C. RELIEFS SOUGHT

22. Complainant has prayed for following reliefs:-

- a) Refund the amount of Rs.10,000/- towards Miscellaneous Charges; Rs.20,000/- towards Interest Free Maintenance Security; Transfer Charges of Rs.37,664/-; Interest of Rs.95,077/- with interest @ 18% from the date of deposits.
- b) To pay the statutory compensation, on account of delay in development and possession, upon the amount deposited till the actual possession and registration of Conveyance Deed.
- c) To withdraw the charges on account of club membership, miscellaneous charges, maintenance charges and holding charges.
- d) To render the account of EDC and to refund the excess amount.
- e) To get the conveyance deed registered in name of complainant in respect to the plot mentioned above i.e. H-786, TDI City, Kundli, Sonapat, after obtaining the completion certificate from the appropriate authority, with cost of the present complaint.

23. It is pertinent to mention here that complainant has restricted her claim vide written arguments filed in the registry on 20.07.2022 to the following relief:-

"4. The complainant is restricting its relief to the statutory compensation on the amount deposited, till the actual possession is handed over and the



conveyance deed is registered, after doing all development work, without insisting upon illegal charges"

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1

Learned counsel for the respondent no. 1 filed a detailed reply on 13.03.2019 pleading therein as under:

24. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- TDI City, Kundli, NH-1, Sonipat, Haryana.
25. That the project in question is not registered under the provisions of RERA Act,2016. Moreover, the project is not even liable to be registered in terms of Section 3 of Act as it does not fall under definition of 'on-going' project under Section 2(o) of RERA Act,2016.
26. That the Directorate of Town and Country Planning, Haryana vide its letter bearing Memo No. CC-70-JE(BR)-2013/57692 dated 18.11.2013 granted Part Completion Certificate (PCC) for an area admeasuring 415 acres in respect of residential plotted colony covered under licence no. 183-228 of 2004, 153 - 167 of 2004, 101 - 144 of 2005, 200 - 285 of 2005, 652-722 of 2006 and 729 - 872 of 2006. Copy of the same is annexed as Annexure R-3.
27. That the Respondent No. 1 Company had applied for the Completion Certificate and had received Part Completion Certificate with respect



to the License in question way before the commencement of the Act/ Rules, the Respondent No. 1 Company is exempted from requirement of registration. Hence, no claim made by the Complainant herein is maintainable before this Ld. Forum.

28. That the principal claim which has been made by the complainant herein is for refund of the payments made by the complainant towards miscellaneous charges of Rs. 20,000/- towards interest free maintenance security, transfer charges of Rs. 37,664/-, interest of Rs. 95,077/- along with interest and statutory compensation. However, it is stated that the possession in respect of the said plot has already been offered to the complainant, therefore, it is humbly submitted that the authority, i.e., Real Estate Regulatory Authority does not have the competence/jurisdiction to decide upon the same as the same is maintainable only before the adjudicating officer as established under Section 71 of the Act. It is on this score alone that the present complaint is liable to be dismissed.
29. That the complainant had bought the plot in question from another person and the said fact is admitted by the complainant, therefore any allegation that the complainant was duped in making the investment, etc. does not hold any water. The Respondent No. 1 Company further craves leave to adduce any other such document in order to prove its case.



30. That respondent has time and again requested the complainant to get the conveyance deed registered in her favor. Final reminder was sent on 16.02.2017, annexed as Annexure C-12. But no response was received from the complainant. Therefore, complainant is liable to pay the holding charges as stated in final statement of account annexed as Annexure R-4.
31. That the project is complete and the offer of possession has already been sent to the complainant.
32. Perusal of file reveals that reply has not been filed by respondent no. 2.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

33. During oral arguments learned counsel for the complainant referred to written arguments filed in July, 2022 whereby, claim was restricted for possession and delay interest alongwith execution of conveyance deed. He further stated that valid offer of possession has not been made till date by respondent. He raised objection to receipt of part completion certificate dated 18.11.2013, stating that development works are not complete till date. He requested that possession be handed over alongwith conveyance deed and delay interest be awarded till execution of actual handing over of plot. Learned counsel for the respondent reiterated arguments as were submitted in written



statement and further submitted that project in which booked plot is located has already received part completion certificate in year 2013. Further, complainant, who is a subsequent purchaser, was duly requested to get conveyance deed executed in the year 2017 but it is the complainant who is running away from her liability of making payment of valid charges. He further stated that complainant due to its own conduct is liable to pay charges on account of non-construction penalty and holding charges. In respect of delay interest prayed till handing over of possession, Id. counsel of respondent argued that complainant herein is a subsequent purchaser, who has accepted the delay, if any, caused in handing over of possession. Herein complainant is the one who purchased plot after inspection/verification of status of plot/project. So, complainant cannot be treated at par with the original allottee/second allottee in terms of awarding of delay interest.

F. ISSUES FOR ADJUDICATION

34. Whether the complainant is entitled to reliefs sought or not?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

35. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:



(i) Complainant has filed present complaint implicating two respondent; first, TDI Infrastructure- respondent-promoter and second, Cannes Property Management services Pvt Ltd- Maintenance agency. However, no relief in particular has been sought against respondent no.2. It is also observed that complainant in its pleadings has raised objections towards conduct/transactions carried out with respondent no. 1 only. Therefore, no direction is being passed against respondent no. 2 in this final order.

(ii) Admittedly, original allottee had booked a plot having an area of 250 sq. yds in respondent's project on 26.08.2005. Following which, allotment letter for plot no. H-786 was issued by respondent in favour of second allottee-Ajay Rastogi and Shalav Rastogi on 13.02.2006. However, exact date as to when second allottee stepped into shoes of original allottee is not specified in complaint pleadings nor in any document. Thereafter, complainant stepped into shoes of second allottee vide endorsement dated 04.10.2011. In total, complainant has paid an amount of Rs 17,95,360/- against total sale consideration of Rs 17,43,050/-. Out of said paid amount, last payment of Rs 51,299/- was made to respondent on 22.07.2009



by the complainant/second allottee which implies that respondent is in receipt of total paid amount since year 2009.

(iii) In the written statement submitted by the respondent, it has been admitted that builder buyer agreement has not been executed between the parties. With respect to status of handing over of possession, the respondent had already issued offer of possession in year 2008 and later in year 2017, complainant was also called for registration of conveyance deed but complainant did not come forward. It has been submitted that project in question has already received part completion certificate on 18.11.2013.

(iv) Authority observes that the builder buyer agreement has not been executed between the parties. Allotment letter for plot in question was issued on 13.02.2006. Contents of allotment letter are as follows-*"We are pleased to allot you a residential plot in our forth coming fully integrated township 'TDI City' at Kundli Sonipat Haryana. As per details mentioned herein below: Area -250 sq. yds , Block Number-H-786, PLC Description-NIL, The allotment of the aforesaid plot is subject to the terms and conditions mentioned overleaf"*. In essence, no date for handing over of possession has been specified in any of the document executed between the parties. In absence of



specific clause of deemed date of possession in allotment letter, it cannot rightly be ascertained as to when the possession of said plot was due to be given to the complainant. In Appeal No. 273/2019 titled as "TDI Infrastructure Ltd vs Manju Arya", Hon'ble Tribunal has referred to 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) and Anr. In which it has been observed that period of 3 years is a reasonable time of completion of construction work and delivery of possession. In present case, plot was allotted vide allotment letter dated 13.02.2006, taking 3 years time period as a reasonable time for completing the project, the deemed date of possession works out to 13.02.2009. Further, it is to mention here that respondent company transferred booking rights in favour of complainant vide endorsement on 04.10.2011. The principal argument of the respondent is with regards to the rights of the subsequent allottee, i.e, the complainant who purchased a unit after being aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed. In cases where the complainant/ subsequent allottee had purchased the unit after expiry of the due date of possession, i.e., 13.02.2009(36 months from date of allotment),



the Authority is of the view that the subsequent allottee cannot be expected to wait for an uncertain period of time to take possession. Even such allottee is waiting for the promised unit and surely he would be entitled to all reliefs under this Act. It would, no doubt, be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute that knowledge that such delay would continue indefinitely based on prior assumption, would not be justified. Furthermore, in cases where the floor buyer agreement/allotment was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the deemed date of possession but before RERA Act, 2016 coming, the statutory right to seek delayed possession interest or refund had not accrued in favour of the original allottee. However, after the date of endorsement, i.e., 04.10.2011 the subsequent allottee stepped into the shoe of original allottee w.r.t the unit and the possession was not handed over, the subsequent allottee became entitled to the statutory relief of delayed interest or refund and same shall be applicable only from the date he was acknowledged as allottee by the respondent promoter. In support, reliance is placed upon the judgement dated 22.07.2021 passed in Civil Appeal No. 7042 of 2019 titled as "**M/s Laurate Buildwell Pvt Ltd vs**



Charanjeet Singh” in which the Hon’ble Supreme Court observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. However, mere knowledge that there is delay in delivery of possession does not justify delay beyond a reasonable period of time. Therefore, such subsequent allottee is entitled to relief of possession and delay interest, from the date the builder acquired knowledge of the transfer, or acknowledged it. Relevant part of the order of the Hon’ble Supreme Court is reproduced below:

“31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder’s obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like



the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms”

In present complaint, the respondent endorsed the transfer of booking rights qua the unit in question in respect of the complainant on 04.10.2011 which is after the expiry of due date of possession, i.e, 13.02.2009. It is the stand of respondent that possession was offered to complainant on 13.11.2008. However, said fact is disputed by the complainant as no offer letter was received by her of said date. It is pertinent to mention here that respondent itself has not annexed any offer letter of year 2008 to establish the fact on record that the possession was offered on 13.11.2008. In case, even it is presumed that possession letter was issued to complainant in year 2008 then said offer was not valid as part completion certificate was received by



the respondent on 18.11.2013. Copy of part completion certificate has been placed on record by respondent as Annexure R-3. Viewed from this perspective, respondent has not offered valid possession to complainant neither in year 2008 nor within reasonable time (3-4 months) of receipt of part completion certificate in year 2013. Thereafter, respondent had issued a letter dated 16.02.2017 to complainant with subject-Registration of conveyance deed. It is relevant to refer to Contents of said letter-*'as per our record, you are allottee of residential plot no. H-786, TDI City, Kundli , Sonipat. The possession of the same was offered to you 13-Nov-2008 alongwith the offer of possession. We requested you to execute the sale/conveyance deed and get it registered with the office of registrar concern. After clearing all dues. We finally request you to execute the sale/coonveyance deed and get it registered till 31st March,2017 of this communication'*. Complainant instead of coming forward in approaching respondent for execution of conveyance deed issued a legal notice dated 27.02.2017. Thereafter, complaint has been filed by complainant before Consumer Dispute rederssal commission, which was withdrawn due to lack of pecuniary jurisdiction and at last, present complaint was filed on 15.01.2019 for relief of possession alongwith delay interest and execution of conveyance deed. Complainant nowhere in its complaint or at the time of arguments



failed to present as to what has stopped her from getting conveyance deed of plot executed in her name and to take actual physical possession of plot. No document has been placed on record by complainant which can establish that complainant faced hindrance in getting the conveyance deed executed. Fact of receipt of part completion certificate dated 18.11.2013 is evident to emphasize the fact that development work in project alongwith services were complete as on year 2013 and complainant could have obtained actual physical possession of plot after getting conveyance deed executed in her favor in compliance of letter dated 16.02.2017. Be as it may be, if complainant had issues/grievances in respect of services in project then she had the option to challenge the same before the competent authority, i.e., Department of Town and Country Planning, Haryana. In these circumstances, where complainant itself was not pro-active after making payment of Rs 15 lacs in year 2009 to get conveyance deed done, the prayer of the complainant that delay interest be awarded till actual handing over of plot/execution of conveyance deed cannot be accepted. Accordingly, in present complaint, the possession which was supposed to be handed over latest by 13.02.2009, was in way offered vide letter of conveyance deed dated 16.02.2017. Letter of conveyance duly indicates that respondent was ready to deliver possession of plot to complainant. Further, there has



been delay of around 6 years in offer of possession/conveyance deed from , date of endorsement, i.e, 04.10.2011 which is an unreasonable delay. Therefore, in light of M/s Laureate Buildwell Pvt Ltd. Vs Charanjcet Singh judgement the complainant will be entitled to interest on the total paid amount from the date of endorsement, i.e., 04.10.2011 till 16.02.2017, date of letter of conveyance deed.

(vi) Now, issue which remains to be adjudicated are non-construction penalty and holding charges. In respect of non-construction penalty of Rs 9,03,007/- mentioned in final statement of account dated 28.01.2019 annexed as Annexure R-4 of reply, it is observed that respondent has not provided any basis like under which provision of allotment/booking form (agreement has not been executed) of imposing it upon the complainant. Respondent without explaining basis of its imposition cannot force the complainant to pay said amount. Accordingly, demand of Rs 9,03,007/- stands quashed. Similar is the case in respect of holding charges of Rs 55,952/-. Respondent has failed to explain as to what steps have been taken by it towards handing over of possession after year 2017. In case, if complainant was not interested in making further payments and to get conveyance deed executed then respondent who is a builder much aware of real estate transaction should have issued termination/cancellation letter to complainant alongwith refund of



paid amount in a pro-active manner. But respondent itself did not take any concrete steps and was waiting for the complainant to file present complaint. There has not been any justified explanation from side of respondent. Besides this, respondent has not annexed any document/letter being issued to complainant explaining imposition of these charges upon her. In these circumstances, respondent cannot be allowed to claim said charges from complainant. Except maintenance charges which complainant is liable to pay w.e.f 16.02.2017.

36. In the present complaint, the complainant 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".

37. 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;

38. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

39. 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. 21.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

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

"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 (MCLR) 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".

41. The Authority observes that the respondent has delayed handing over of possession of plot since deemed date is 13.02.2009. Respondent has issued a letter for conveyance deed to the complainant on 16.02.2017, that too after receipt of part completion certificate 18.11.2013. Complainant however is interested in getting the possession of the booked plot. She does not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the unit the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has made valid offer of possession to the complainant on 16.02.2017. Keeping in view the aforesaid discussions, Authority hereby concludes that the complainant is entitled for the delay interest from the date of endorsement i.e 04.10.2011 till 16.02.2017, date of letter of conveyance deed.

42. Authority has got calculated the interest on total paid amount and holding charges as per detail given in the table below:

Complainant in its complaint has not specifically stated the total paid amount except basic sale price of ₹ 15,44,634/-. However, as per statement of account dated 05.09.2011 annexed at page no. 27 of complaint, total paid



amount comes to ₹ 17,95,360/-. Said amount is taken as final for purpose of calculation of interest.

Sr. No.	Principal Amount	Date of endorsement	Interest Accrued till
1.	₹ 17,95,360/-	04.10.2011	16.02.2017
	Total = ₹ 17,95,360/-		10,71,771/-
			₹ 10,71,771/-

I. DIRECTIONS OF THE AUTHORITY

43. 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 delay interest of Rs. 10,71,771/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

(ii) Respondent is directed to handover physical possession of plot to the complainant and to get conveyance deed executed within 90 days of uploading of this order. Further, respondent is directed to charge maintenance charges w.e.f 16.02.2017, and if any amount has already been paid by complainant then that amount be adjusted in it.

(iii) Complainant will remain liable to pay balance consideration amount to the respondents including stamp duty charges within 60 days of uploading of this order.

(iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]