HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2644 of 2022**
Date of filing:	**30.09.2022**
First date of hearing:	**24.11.2022**
Date of decision:	**14.10.2024**

Savita

W/o Ajeet Jain

R/o #442, Sector 23, Sonipat-131001 .....COMPLAINANT

Versus

Mapsko Builders Pvt. Ltd.

52, North Avenue Road, Punjabi Bagh,

Through its authorized signatory

New Delhi-110026 .....RESPONDENT

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Adv. Vikas Lochab, counsel for complainant through VC.

Adv. Akshat Mittal, counsel of respondent.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 30.09.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name and location of the project	Mapsko City Homes, Sector 27, Sonipat, Haryana
2.	RERA registered/not registered	Un-registered
3.	Floor Buyers Agreement	10.10.2010 (Annexure P-1 in complaint book)

4.	Unit no.	Floor No.- 140 SF, in ME Block
5.	Unit area	860sq. ft. on 180 sq. yds. area of plot
6.	Total sale consideration	₹14,27,040/-
7.	Amount paid by complainant	₹16,23,099/-
8.	Possession clause	(As per clause 14(a) of the Agreement which says "*promoter shall endeavor to complete the construction of the said floor within a period of 18 months from the date of signing of the agreement with the buyer or within an extended period of 6 months, subject to force majeure conditions...*".
9.	Deemed date of possession (18 months from execution of agreement i.e., 10.10.2010)	10.04.2012
10.	Occupation certificate	05.07.2017
11.	Actual handover of possession	24.07.2021

A. FACTS OF THE COMPLAINT

3. That initially Mr. BC Marwaha had booked the Floor No. 140 on Second Floor in ME Block, having Built up Area of 860 Sq. Ft. on the 180 Sq. Yards.

area of Plot for ₹12,95,040/-(Basic Sale Price) in the project of respondent namely Mapsko City Homes, in Sector 27 Sonipat, Haryana on 29.12.2009. The buyers agreement was executed on 10.10.2010. On 07.12.2011 Mr. BC Marwaha transferred the said floor in the name of the complainant. A Copy of the agreement dated 10.10.2010 which was executed by the company with the Mr. BC Marwaha is annexed as Annexure P-1 and a copy of the endorsement in favour of complainant dated 07.12.2012 issued by company is annexed as Annexure P-2.

4. That complainant has purchased the abovementioned floor with a hope that she will get the possession in the April 2012 (as mentioned in the agreement), but all her hopes have been destroyed by the respondent by not offering possession in time. Ultimately, she extended the residence to another rented accommodation and is paying Rs. 12000/- per months, which is far away from her financial capacity.

5. That as per clause 14 (a) of the agreement dated 10.10.2010, respondent had promised to complete the construction of the above said Floor within a period of 18 months or within an extended period of six months. However, respondent offered the possession vide letter dated **16.09.2017** and even then the floor was not in complete condition. There were certain incomplete things

like Flooring, Paint, electricity work, plumber work and other finishing works. A copy of the letter dated 16.09.2017 issued by the respondent is annexed as Annexure P-3. To prove the work condition of the floor photograph of the year 2018 are annexed as Annexure P-4.

6. That the initial booking amount of ₹1,29,504/- was paid to the respondent on 29.12.2009. Further receipt dated 06.02.2010 of amount of ₹1,29,504/-, and another receipt of amount of Rs. 1,95,500/- dated 29.05.2010 which were deposited by Mr. Mr. B C Marwaha are annexed as P-5 (colly). These receipts were endorsed by the respondent company on the date of transfer in the name of the complainant. Further, in all a total of ₹16,23,099/- were paid by the complainant. All receipts are annexed as Annexure P-5 (Colly).

7. Respondent has used the hard earned money of the complainant as per their convenience and they have issued offer of possession by delaying it for more than 05 years and 05 Months. It is also apt to mention here that complainant was regularly paying the installments as per the demand of the respondent.

8. That complainant has approached the office of the respondent personally/phone/email several times to inquire with regard to completion of construction work of the Floor in all respect but respondent never gave any satisfactory answers. When the complainant requested for refund the hard

earned money than they threatened to impose heavy penalty charges along with deduction of payments towards agent and kept utilizing the huge payments for their own gains for more than 05 years and 05 months which amounts to unfair trade practice followed by the builder and is a recurring cause of action.

B. RELIEFS SOUGHT

9. Complainant has sought following reliefs:

   i. *In the event that the registration has been granted to the Respondents company for the project namely Mapsko City Homes in Sonipat, Haryana under RERA read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA.*

   ii. *In exercise of powers under section 35, direct the Respondents company to place on record all statutory approvals and sanctions of the project;*

   iii. *In exercise of powers under section 35 OF RERA AND RULE 21 OF HRE(R&D) RULES, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;*

iv. *To compensate the Complainant Petitioner for the delay in completion of the project;*

v. *The complaint may be allowed with costs and litigation expenses of Rs. 50,000/-;*

vi. *Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.*

C. REPLY ON BEHALF OF RESPONDENTS

10. In response to the complaint, the respondent filed a detailed reply on 01.05.2023 where respondent argued that the complaint should be dismissed for several legal and procedural reasons.

i. That it is submitted that the instant complaint is not maintainable before this Hon'ble Authority as the Hon'ble Authority would not hold jurisdiction over the instant lis as the prayers made, i.e., vis-a-vis the compensation for delay with interest @ 18%, costs and litigation expenses of Rs. 50,000/- etc. could only be adjudicated upon by the Hon'ble Adjudicating Officer. The complaint is thus liable to be dismissed on this score alone.

ii. That the complaint has been instituted with an investor mindset seeking ulterior gains with an investor mindset. It is submitted that no relief

could be accrued to any investor under the Act, which is abundantly clear from the perusal of the objectives of the Act, which finds mention of *'...to protect the interest of consumers in the real estate sector...'*

iii. Further, as per Floor Buyer Agreement dated 10.10.2010, it was agreed between the parties that the disputes shall be settled amicably by mutual discussion, understanding and arbitration.

iv. That as per the terms and conditions of the Floor Buyers Agreement, only the courts at Sonepat or Delhi shall have jurisdiction in case of any dispute.

11. That further, the unit in question is complete in all respect and the possession had been offered to the complainant on 11.08.2016. The Occupation certificate qua the unit in question was duly applied on 07.12.2016 and was obtained on 05.07.2017. The complainant has already taken possession and is residing in the unit in question since 24.07.2021 that too after duly signing the possession letter and being satisfied in all respects. It is submitted that the instant complaint is filed after more than 6 years of the offer of possession and after already taking the physical possession of the unit, which clearly reflects upon the malafide intention and ill-will behind filing of the instant complaint. The complaint is liable to be dismissed on this score alone.

12. The offer of possession letter dated 11.08.2016 has been concealed by the complainant and has not been attached for the reasons best known to him. As such the answering respondent is attaching the copy of the offer of the possession letter dated 11.08.2016 as Annexure R-1.

B. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

13. Learned counsel for complainant stated that the complainant purchased Floor No. 140 in Mapsko City Homes, Sonipat, originally booked by Mr. BC Manvaha in 2009 and transferred to her in 2011 (Annexures P-1 and P-2). Expected possession by April 2012 was delayed, forcing her to rent accommodation @ ₹12,000 per month. Although the respondent promised completion within 18 months with an extended period of 6 months, possession was only offered in September 2017, with the floor still incomplete (Annexures P-3 and P-4). The complainant made total payments of ₹16,23,099/- (Annexure P-5) and followed up multiple times, yet received no satisfactory updates or refund options, indicating an unfair trade practice by the respondent.

14. On the other hand, Ld. counsel for respondent stated that initially unit was allotted to Mr. BC Marwaha vide floor buyer agreement dated 10.10.2010. Later on, the said unit was endorsed to the complainant on 07.12.2011. Issue in captioned complaint is with regard to the deemed date of possession. As per clause 14(a) of the Floor buyer agreement, "*....promoter shall endeavor to complete the construction of the said floor within a period of 18 months from the date of signing of the agreement with the buyer or within an extended period of 6 months, subject to force majeure conditions...*". The counsel requested that the Authority consider the endorsement date (07.12.2011) as the agreement's start date with the complainant, making the possession due date in 24 months from this endorsement i.e., 07.12.2013. Further, possession was offered to the complainant on 11.08.2016. Occupation certificate has been obtained by the respondent on 05.07.2017. Actual handover of possession letter to the complainant was issued on 24.07.2021.

15. Authority enquired from the ld. counsel for respondent whether possession was offered after obtaining the occupation certificate. The respondent's counsel confirmed that possession was re-offered on 16.09.2017, and the complainant was aware of this, as evidenced by the letter annexed to her complaint.

C. ISSUES FOR ADJUDICATION

16. Whether the complainant is entitled to delay interest in terms of Section 18 of Act of 2016?

D. OBSERVATIONS AND DECISION OF THE AUTHORITY

In light of the background of the matter as captured in this order and also the arguments submitted by the learned counsels for both the parties, the Authority observes as follows:

17. In captioned complaint, Mr. BC Marwaha had booked a floor no. 140, on Second Floor, ME block measuring 860 sq. ft. in the project of the respondent namely "Mapsko City Homes". Floor Builder Agreement was executed between the original allottee and respondent on 10.10.2012. Later on the unit was endorsed to the complainant on 07.12.2011. Against the total sale consideration of ₹14,27,040/-, an amount of ₹16,23,099/- stands paid by the complainant to respondent. Further, the Occupation certificate qua the unit in question was duly applied by the respondent on 07.12.2016 and was obtained by the competent Authority on 05.07.2017. Possession has been handed over to the complainant vide letter dated 24.07.2021.

18. As per clause 14(a) of the Floor buyer agreement, "*....promoter shall endeavor to complete the construction of the said floor within a period of 18*

months from the date of signing of the agreement with the buyer or within an extended period of 6 months, subject to force majeure conditions...". Issue is with regard to the calculation of deemed date of possession. Floor buyer agreement was executed between the parties on 10.10.2010. Therefore, deemed date of possession, 18 months from the staring date of the agreement comes to 10.04.2012. However, ld. counsel for respondent verbally submitted during the hearing that starting date to calculate deemed date of possession should be taken as when unit was actually endorsed to the complainant. i.e, from 07.12.2011 and not from the starting date of the agreement. Authority is of the view that under the RERA (Real Estate (Regulation and Development) Act, 2016), the calculation of the deemed date of possession is primarily guided by the agreements made between the builder and the buyer, as well as the regulatory framework set by RERA. In this case, the Floor Buyer Agreement dated 10.10.2010 outlined an 18-month period for possession, with an additional 6-month extension possible due to force majeure. Under RERA, if a property is transferred to a new buyer (such as in this case, from Mr. BC Marwaha to the complainant), the terms of the original agreement continue to apply, unless a new agreement is made. RERA states that the transferee (the new buyer) steps into the shoes of the original allottee and is

bound by the same terms of the agreement, unless explicitly stated otherwise. Therefore, the complainant would be bound by the original terms, including the possession date as stipulated in the agreement signed by Mr. Marwaha on 10.10.2010. RERA does not specifically provide for an automatic reset of timelines based on the endorsement date (i.e., 07.12.2011), which the ld. counsel for respondent was arguing. The transfer of the unit to the complainant does not change the original agreed-upon timeline for possession, which started from the original agreement date (10.10.2010). The endorsement simply formalized the transfer of rights and obligations, but it did not create a new agreement. Authority concludes that the respondent's request to calculate the possession date from 07.12.2011 is not supported by the law, as the transfer of the unit did not alter the terms of the original agreement. Both complainant and respondent are bound by the agreement dated 10.10.2010, and the possession date should be calculated from that agreement's start date, not from the endorsement. Moreover, the obligation to deliver possession within the period stipulated in the Floor Buyer Agreement, i.e., 18 months from the date of execution of agreement is not fulfilled by respondent till date. There is delay on the part of the respondent and the respondent could not prove that the delay in offer of possession was due to

force majeure conditions as the due date of possession was in the year 2012 as per the agreement. Therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected. Thus, deemed date possession in captioned complaint is ascertained as eighteen months from the date of execution of floor buyer agreement which comes out to be **10.04.2012.**

19. Respondent has challenged maintainability of the complaint on following grounds:

a. *Firstly, Hon'ble Authority would not hold jurisdiction upon the complaint as the complainant is praying firstly for compensation for delay with interest @18% cost and litigation expenses of Rs. 50,000/-, which all would solely fall under the ambit, scope and jurisdiction of the Ld. Adjudicating Officer and not of this Hon'ble Bench.*

In this regard, Authority observes that firstly; complainant is praying for the relief of delay interest. It is pertinent to mention here that, as per Section 18 of RERA Act, if the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the

terms of the agreement for sale, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building with interest at such rate as may be prescribed and compensation in the manner as provided under the Act. Therefore, section 18 of the RERA Act specifically empowers the Authority to mandate compensation on account of delay in handing over of possession. Concluding the same, the said complaint is very well within the jurisdiction of the Authority for the grant of delay interest.

Respondent has also challenged the maintainability on the ground that complainant is praying for the relief of ₹50,000/- towards costs and litigation expenses. With regard to the second relief, 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 PvL 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 complainant is advised to approach the Adjudicating Officer for seeking the relief for mental torture, agony, discomfort and undue hardship of litigation expenses.

b. *Secondly, that the complainant has filed the instant complaint seeking ulterior gains with an investor mindset.*

In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules and regulations. In the present case, complainant is aggrieved person who has filed a complaint under section 31 of the RERA Act, 2016 against the promoters for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here it is important to emphasize upon the definition of the term allottee under the RERA Act 2016, reproduced below:-

> *"Section 2(d): **Allottee:** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and*

includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

In view of the above mentioned definition of allottee as well as upon careful perusal of Floor buyer agreement dated 10.10.2010, it is clear that complainant is an allottee as unit bearing no. 140, admeasuring 860 sq. ft. in the project known as "Mapsko City Homes" situated at Sector-27, Sonipat, Haryana was allotted to her by the respondent promoter. The concept/ definition of investor is not provided or referred to in RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self consumption or for investment purpose.

The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the

contention of the promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

c. *Thirdly, as per clause 32 of the Floor Buyer Agreement dated 07.03.2012, it was agreed between the parties that the disputes shall be settled amicably by mutual discussion, understanding and arbitration.*

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to

Arbitration even if the agreement between the parties had an arbitration clause. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*
> *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*
> .....

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017*** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being u special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation

in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."* Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that

complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not required to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the Authority is of the view that the objection of the respondents stands rejected.

d. *Fourthly, as per the terms and conditions of the Floor Buyers Agreement, only the courts at Sonepat or Delhi shall have jurisdiction in case of any dispute between the parties.*

As per notification no. 1 /92/2017'ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with office situated in Panchkula. In the present case the project in question is situated within the planning area of Sonipat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

20. Therefore, Authority concludes that on the basis of above mentioned reasons the captioned complaint is very well within the jurisdiction of the Authority.

21. After perusal of files, Authority observes that the respondent initially offered possession of the unit to the complainant through a letter dated **11.08.2016**. However, the Authority is of the view that the 11.08.2016 offer of possession was made without occupation certificate, making it legally insufficient. An occupation certificate is a crucial document that confirms the construction of the property has been completed in accordance with approved plans, and the building is fit for occupancy. Under RERA and common legal practice, possession cannot be offered without an occupation certificate because it ensures the property is ready for habitation and meets all legal and safety requirements. Additionally, the Authority found that the respondent had not even applied for the occupation certificate by the time of the initial possession offer (11.08.2016) which proves that the respondent did not have the required approvals to offer possession legally. The absence of this key document raises questions about whether the property was genuinely ready for possession at the time of the offer. Given these circumstances, the Authority concluded that the offer of possession made on 11.08.2016 was invalid because it did not comply with legal requirements, particularly the absence of the occupation

certificate. A second offer of possession was made to the complainant through letter dated **16.09.2017**, which was made after the respondent obtained the occupation certificate on **05.07.2017**. This made the second offer of possession legally valid. The occupation certificate signifies that the property was officially deemed ready for possession, and as per legal norms, only after obtaining such a certificate can a developer offer possession to the buyer. Therefore, the second offer made by the respondent on **16.09.2017** after the issuance of the occupation certificate is the legally valid offer of possession.

22. Furthermore, it is a matter of fact that the deemed date of possession in captioned complaint is 10.04.2012, (18-month period from the Floor Buyer Agreement execution date of 10.10.2010, as stipulated in clause 14(a) of the agreement). The respondent, however, failed to meet this timeline, with possession only handed over on 16.09.2017, more than five years after the agreed timeframe. The respondent obtained the occupation certificate from the competent authority on 05.07.2017, allowing for legal possession only after this date. Given that possession was officially handed over on 16.09.2017, this prolonged delay strengthens the complainant's claim for compensation for the period between the deemed date of possession (10.04.2012) and the date of legally valid offer of possession (16.09.2017).

23. In the present complaint, the complainant 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".*

24. The respondent in this case has not made timely offer of possession to the complainant. Hence, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e. 10.04.2012 till the date on which a legally valid offer is made to them after obtaining occupation certificate, i.e, 16.09.2017. 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;

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. 14.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

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]

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".

26. Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 10.04.2012 till the date on which a legally valid offer is made to him after obtaining occupation certificate, i.e, 16.09.2017 at the rate of 11.10% till, and said amount works out to **₹6,60,308/-** as per detail given in the table below:

Sr. No.	Principal Amount (in Rs.)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 16.09.2017 (in Rs.)
	133499	2014-01-25	54036
	133506	2014-06-14	48355
	133506	2014-07-26	46650
	133506	2014-09-29	44011
	133506	2015-01-17	39545
	164082	2016-08-29	19161
	102736	2016-09-10	11622
	35400	2017-02-13	2325
	129504	2012-04-10	78215
	129504	2012-04-10	78215
	195500	2012-04-10	118075
	198850	2012-04-10	120098
	1623099		**660308**

27. Accordingly, the respondent is liable to pay the upfront delay interest of ₹**6,60,308**/- to the complainant towards delay already caused in handing over the possession.

28. Lastly, regarding relief items (i), (ii) and (iii) as mentioned in the complaint, neither party presented arguments or emphasized these reliefs during the hearing. Consequently, the Authority finds it appropriate not to adjudicate these specific reliefs, as there was no active pursuit or discussion of these matters by either the complainant or the respondent.

29. The complainant is seeking compensation of ₹50,000/- for costs and litigation expenses which has already been adjudicated in Para 19(a) of this order

B. DIRECTIONS OF THE AUTHORITY

30. 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 ₹**6,60,308**/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

(ii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 11.1% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

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CHANDER SHEKHAR
[MEMBER]

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NADIM AKHTAR
[MEMBER]