



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2641 of 2022
Date of filing:	30.09.2022
First date of hearing:	24.11.2022
Date of decision:	14.10.2024

**Rajesh Kumar**

S/o Sh. Mehar Singh

R/o #595, 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**

1. 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	07.03.2012 (Annexure C-4 in complaint book)
4.	Unit no.	Floor No.- 174, SF, in ME Block
5.	Unit area	860sq. ft. on 180 sq. yds. area of plot
6.	Total sale consideration	₹14,40,530/-
7.	Amount paid by complainant	₹15,46,012/-



8.	Possession clause	(As per clause 14(a) of the Agreement which says " <i>the promoter shall endeavor to complete the construction of the said Floor within a period of eighteen months from the date of signing of this Agreement with the buyer or within an extended period of six months, subject to force majeure conditions ...</i> ".
9.	Deemed date of possession (18 months from execution of agreement i.e., 07.03.2012)	07.09.2013
10.	Occupation certificate	06.10.2017
11.	Actual handover of possession	12.07.2018

## **B. FACTS OF THE COMPLAINT**

2. That complainant has booked the Floor No. 174 on Second Floor in ME Block, Having Built up Area of 860 Sq. Ft. on the 180 Sq. Yards. area of Plot for ₹13,08,530/- (Basic Sale Price) in the project of respondent namely Mapsko City Homes, in Sector 27 Sonipat, Haryana.
3. On 11.01.2010 complainant paid initial booking amount of ₹1,30,000/-. Floor Buyer Agreement was executed between the parties on 07.03.2012, a copy of which is annexed as Annexure P-1.



4. That complainant had purchased the abovementioned floor with a hope that she will get the possession in the September 2013 (as mentioned in the agreement), but all his hopes have been destroyed by the respondent by not offering possession in time. Ultimately, he extended the residence to another rented accommodation and is paying Rs. 12000/- per months, which is far away from his financial capacity.
5. That as per clause 14 (a) of the agreement dated 07.03.2012, 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 **12.07.2018** 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 12.07.2018 issued by the respondent is annexed as Annexure P-2.
6. That the initial booking amount of ₹1,30,000/- was paid to the respondent on 11.01.2010. Further payments (in Total Rs. 15,46,012/-) were made by the complainant. Applicant's ledger dated 21.05.2018, issued by the respondent is annexed as Annexure P-3(Colly).



7. Respondent has used the hard earned money of the complainant as per their convenience and issued offer of possession by delaying it for more than 05 years. 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 which amounts to unfair trade practice followed by the builder and is a recurring cause of action.

**C. RELIEF(S) 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. *To compensate the Complainant Petitioner for the delay in completion of the project;*
- iv. *The complaint may be allowed with costs and litigation expenses of Rs. 50,000/-;*
- v. *Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.*

**D. 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. 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. That 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.
  - iv. That as per the terms and conditions of the Floor Buyers Agreement, only the courts at Sonapat 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 05.04.2017. The Occupation certificate qua the unit in question was duly applied on 01.05.2017 and was obtained on 06.10.2017. The complainant has already taken possession and is residing in the unit in question since 14.07.2018 that too after duly signing the possession letter and being satisfied in all respects. That the instant complaint



is filed after more than 4 years of 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. Copy of occupation certificate dated 06.10.2017 is annexed as "Annexure R-3"

12. The offer of possession letter dated 05.04.2017 has been concealed by the complainant and has not been attached for the reasons best known to him. Copy of the offer of the possession letter dated 05.04.2017 is annexed as Annexure R-1.

E. **ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS**

13. Learned counsel for complainant stated that complainant booked Floor No. 174 on the second floor of ME Block in Mapsko City Homes, Sector 27, Sonipat, Haryana, for ₹13,08,530, with an initial payment of ₹1,30,000 on 11.01.2010. A Floor Buyer Agreement was executed on 07.03.2012, with promised possession by September 2013. However, the respondent delayed possession until 12.07.2018, and even then, the floor was incomplete with pending flooring, paint, electrical, and plumbing work. Despite paying a total of ₹15,46,012, the complainant had to continue renting at ₹12,000 per month





due to the delay. Lastly, he stated that attempts to seek information with regard to the possession or a refund were met with threats of penalties, causing financial and emotional distress.

14. On the other hand, Ld. counsel for respondent stated that complainant has wrongly averred in his complaint book that possession was offered by the respondent to the complainant on 12.07.2018. Possession of the unit in question was offered to the complainant via letter dated 05.04.2017 as is evident from Annexure R-1 annexed in the reply book. He further stated that Occupation certificate qua the unit in question was obtained by the respondent on 06.10.2017.
15. Authority enquired from ld. counsel for respondent that whether possession was offered to the complainant after obtaining occupation certificate from the competent Authority?
16. To which, he stated that possession was not offered to the complainant after obtaining occupation certificate as the respondent has already offered possession to the complainant on 05.04.2017 after completion of all development works. Hence, he requested that the Authority to consider the valid offer of possession date as 06.10.2017, when the occupation certificate was received by the respondent.



17. Authority again asked ld. counsel for respondent that whether the offer of possession made by the respondent on 12.07.2018 was accepted by the complainant? The counsel replied that the complainant took possession via a letter dated 12.07.2018, which was submitted as Annexure P-2 in the complainant. Upon review of the said letter, the Authority observed that it bears no signatures of the complainant to prove that possession was accepted by the complainant on that date. The counsel argued that since the complainant annexed the letter, it implies acknowledgment of the letter and the possession. He also highlighted that the complaint was filed in the year 2022, i.e., four years after possession was allegedly taken by the complainant in the year 2018.

**F. ISSUES FOR ADJUDICATION**

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

**G. 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:



19. In captioned complaint, complainant had booked a floor no. 174, 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 parties on 07.03.2012. Against the total sale consideration of ₹14,40,530/-, an amount of ₹15,46,012/- stands paid by the complainant to respondent. Complainant has attached complainant's ledger account at Annexure P-3 as proof of payments made to respondent. Further, the Occupation certificate qua the unit in question was duly applied by the respondent on 01.05.2017 and was obtained by the competent Authority on 06.10.2017.
20. 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 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 2013 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 **07.09.2013**.

21. 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 Pvt Ltd. V/s State of U.P. &ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the



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 07.03.2012, it is clear that complainant is an allottee as unit bearing no. 174, admeasuring 860 sq. ft. in the project known as "Mapsko City Homes" situated at Sector-27, Sonipat, Haryana was allotted to them 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 Appellate 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 a 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 Sonapat 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.

22. Therefore, Authority concludes that on the basis of above mentioned reasons the captioned complaint is very well within the jurisdiction of the Authority.
23. Another issue which has to be adjudicated by the Authority is to determine legally valid date of offer of possession, as this is disputed by both parties. The complainant asserts that the only possession offer received by him was



on 12.07.2018. However, the respondent counters this by claiming that the formal possession offer was actually made on 05.04.2017, and the letter dated 12.07.2018 serves as a record of the physical handover of the unit to the complainant.

24. Authority after perusal of records observes that the respondent submitted a letter dated 05.04.2017, which they claim was the initial possession offer sent to the complainant. However, the respondent did not provide any proof of service for this letter, making it uncertain whether the complainant actually received this communication. Furthermore, as of 05.04.2017, the respondent had not yet applied for the occupation certificate, a key requirement for offering a legally compliant possession. The lack of an occupation certificate on that date raises concerns about the legitimacy of the 05.04.2017 letter as an official possession offer. Without proof of receipt by the complainant and given the absence of the occupation certificate, the Authority declares letter dated 05.04.2017 as the legally invalid date for the offer of possession.
25. Secondly, the respondent argued that the date of the valid possession offer should align with the date they received the occupation certificate, which was 06.10.2017. However, the Authority observed that the respondent admitted no further communication was sent to the complainant after the initial letter



dated 05.04.2017 to inform them that the occupation certificate had been obtained. Given the lack of notification from the respondent regarding the receipt of the occupation certificate, the Authority finds it unreasonable to expect the complainant to assume or be aware of this information. Without direct communication or proof of service showing the complainant was informed, the respondent's claim that 06.10.2017 should be considered the valid possession date cannot be upheld. Therefore, the Authority reject the respondent's plea, finding that the respondent's failure to notify the complainant directly about the occupation certificate's issuance undermines their argument for using this date as the legally valid offer of possession.

26. Perusal of content of the letter dated 12.07.2018, the Authority noted that it clearly serves as a record of the physical handover of possession rather than an offer or invitation for possession. The letter states that "*it is immense pleasure for MAPSKO Builders Pvt. Ltd. to handover the possession*" of the second floor on Floor no. 174 in block ME, with specific property details, in accordance with the terms outlined in the Floor Buyer's Agreement. It further references related documents, such as the maintenance agreement and conveyance deed, to be executed as part of the handover process. Significantly, the letter contains language indicating that possession was



transferred amicably and with “no dispute between the parties,” reinforcing that this was the final transfer of the property rather than an initial possession offer. The absence of any phrasing that might suggest an "offer" or "invitation" for the complainant to take possession underscores that this letter pertains solely to the handover. Furthermore, the complainant included this letter in the complaint as Annexure P-2, demonstrating awareness of its content and purpose. This acknowledgment supports the Authority's interpretation that the letter dated 12.07.2018 is a confirmation of possession being handed over, not an invitation or offer, as would typically precede a handover.

27. The Authority holds that the only legally valid offer of possession occurred on the date of the actual handover to the complainant, i.e., 12.07.2018. This date is considered the valid possession date, as it marks the formal transfer of the property to the complainant, evidenced by the possession letter confirming the handover. The Authority's review of the records and the letter's content further supports that prior communications did not constitute a formal offer. Therefore, **12.07.2018** is determined to be the official date of possession.
28. Furthermore, it is a matter of fact that the deemed date of possession in captioned complaint is 07.09.2013, (18-month period from the Floor Buyer



Agreement execution date of 07.03.2012, as stipulated in clause 14(a) of the agreement). The respondent, however, failed to meet this timeline, with possession only handed over on 12.07.2018, more than four years after the agreed timeframe. The respondent obtained the occupation certificate from the competent authority on 06.10.2017, allowing for legal possession only after this date. Given that possession was officially handed over on 12.07.2018, this prolonged delay strengthens the complainant's claim for compensation for the period between the deemed date of possession, i.e., (07.09.2013) and the actual handover date, i.e, 12.07.2018.

29. 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”.*

30. 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. 07.09.2013 till the date on which a legally valid offer is made to them after obtaining occupation certificate, i.e, 12.07.2018. 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;*

31. 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”.*

32. Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 07.09.2013 till the date on which a legally valid offer is made to him after obtaining occupation certificate, i.e, 12.07.2018 at the rate of 11.10% till, and said amount works out to ₹6,83,718/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 12.07.2018 in rs.
1.	₹1,30,000/-	2013-09-07	69976
	₹1,12,606/-	2013-09-07	60613
	₹2,35,000/-	2013-09-07	126494
	₹1,97,436/-	2013-09-07	106275
	₹1,34,897/-	2014-02-08	66294
	₹1,34,894/-	2014-06-21	60836
	₹1,35,649/-	2014-08-21	58661
	₹1,34,897/-	2014-09-22	57023

₹1,34,897/-	2015-02-23	50705
₹30,241/-	2017-01-10	5049
₹1,65,492/-	2017-05-06	21792
Total- 15,46,009/-		<b>683718</b>

33. Accordingly, the respondent is liable to pay the upfront delay interest of ₹6,83,718/- to the complainant towards delay already caused in handing over the possession.
34. Lastly, regarding relief items (i) and (ii) 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.
35. The complainant is seeking compensation of ₹50,000/- for costs and litigation expenses which has been adjudicated in Para 21(a) of this order.


**B. DIRECTIONS OF THE AUTHORITY**

36. 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 ₹6,83,718/- 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.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]