



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint nos.:	1181 of 2023
Date of filing:	07.06.2023
Date of first hearing:	11.07.2023
Date of decision:	20.01.2025

Aruna Sharma W/o Sandeep Kumar

R/o House No. 16, Labour Court Wali Gali, Prem Nagar,
Sector-2, Bahadurgarh, Haryana-124507.

....COMPLAINANT

VERSUS

M/s GNEX Realtech Private Limited

through its Managing Directors/Partners/Authorised Representative
Registered office at B-10, Lawrence Road,
Industrial Area, Delhi – 110035

.... RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: -Mr. Naveen Singhal, counsel for the complainant.

Mr. Shrey Sharma, Authorised Representative of Company,
through VC.

ORDER (NADIM AKHTAR -MEMBER)

1. Present complaint has been filed on 07.06.2023 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by the complainant, sale consideration, the amount paid by the complainant and details of project are given in following table:

S.No.	Particulars	Details
1.	Name of the project	"Asha-Bahadurgarh, Phase-II"
2.	Plot no. and area	A-195, measuring 131 Sq. Yds.
3.	Date of allotment	09.09.2019
4.	Date of Builder Buyer Agreement/ Agreement to Sell	09.10.2019
5.	Due date of offer of possession	09.09.2021
6.	Possession clause	<i>8.1. Schedule for possession of the Plot: The Company agrees and</i>



	<p><i>understands that timely delivery of possession of the Plot for residential usage to the Allottee as provided under Rule 2(1)(f) of the said Rules, is the essence of this Agreement.</i></p> <p><i>The Company assures to hand over possession of the Plot for residential usage as detailed in Schedule E of this Agreement unless there is delay due to Force Majeure, Court orders, Government policy/ guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh, Phase- II project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Plot for residential usage.</i></p> <p>Schedule "E" details of timelines for handing over the possession of the plot:</p> <p><i>The Company shall make all efforts to complete the development and handover the possession of the said Plot within twelve (12) months plus two (02) months grace</i></p>
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		<i>period from the date of signing of this Agreement subject to Force Majeure, Court orders, Government policy/guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh, Phase- II project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Plot for residential usage.</i>
7.	Basic sale price	₹ 40,51,830/-
8.	Amount paid by complainant	₹40,95,881/- (as per receipts attached with complaint file)
9.	Offer of possession	Yes, on 12.02.2023

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Complainant booked a plot ad-measuring carpet area 131 sq. yd. in the project of 'ASHA Bahadurgarh Phase-II' at Sector-36, Bahadurgarh Distt- Jhajjar, Haryana-124507. Complainant was issued allotment letter dated 09.09.2019 whereby, she was allotted plot no. A-195, Phase-II, ad-measuring carpet area 131 sq. yd. on payment of ₹4,05,183/- as booking amount which was paid vide cheque no. 698403 dated 03.09.2019, whose receipt was issued on 03.09.2019. Copies of all the receipts are annexed as

- Annexure P-1(Colly) and copy of allotment letter dated 09.09.2019 is annexed as Annexure P-2.
4. That complainant entered into the Allotment cum Buyer's Agreement on 09.10.2019 with the respondent. Under the said agreement the complainant has been allotted plot no. A-195, Phase-II at a discounted price of Rs.30,930/- per Sq. Yd. & for a total sale consideration of 40,76,830/. Copy of the Buyer's Agreement is annexed as Annexure P-3.
 5. Complainant has paid an amount of ₹40,95,881.00/- towards the price of the said plot to the respondent. As per the agreement the respondent was to give the possession of the said plot within 12 months plus 2 months grace period from the date of the agreement, i.e, till 09.12.2020.
 6. Complainant availed a housing loan of ₹28,23,000/- from P.N.B Housing Finance Limited @ 9.65% per annum approx. under floating rate of interest for said plot no. A-195. A Tripartite Agreement was also executed between the complainant, respondent and P.N.B Housing Finance Limited on 28.09.2019. Copy of Tripartite Agreement is annexed as Annexure P-4. Copy of Letter to mortgage & No Objection Letter dated (03.12.2019) by Indiabulls Housing Finance are annexed as Annexure P-5 (Colly).
 7. That the complainant has paid ₹40,95,881/- through P.N.B Housing Finance Limited as per demands raised by the respondent without any delay but the construction at site was not in line with demands, so the



P.N.B Housing Finance Limited disbursed the loan amount to the respondent as per the progress of construction mentioned in Schedule D of Buyer's agreement. Copy of P.N.B Housing Finance Limited Statement of Account (Loan) is annexed as Annexure P-6.

8. That P.N.B Housing Finance Limited vide its emails to complainant mentioned the reason of not disbursing the demanded money by the respondent. The reason of denial was the technical visit report which P.N.B Housing Finance Limited usually do on every demand. True copies of said emails are annexed as Annexure P-7 (Colly).
9. That respondent delayed the development of the said project that's why the P.N.B Housing Finance Limited disbursed the loan amount to the respondent as per the progress of construction mentioned in 'Schedule D' of Buyer's agreement but despite being at fault for the delay the respondent then charged the interest upon the complainant which was completely unjust and illegal. The complainant then met the respondent's office bearers and raised her objection regarding the said interest. The respondent then waived the complete interest in his reminder cum demand letter dated 14.01.2022 but surprisingly the respondent then again charged the late interest in the later reminder cum demand letters. Copies of reminders cum demand letters are annexed as Annexure P-8 (Colly).
10. That as per 'Schedule D' of the Apartment Buyer's Agreement dated 09.10.2019, the respondent was under an obligation to provide the



- amenities & facilities which are necessary for the project, however, respondent failed to provide the same till date.
11. That as per 'Schedule E' of the Apartment Buyer's Agreement dated 09.10.2019, the respondent was under an obligation to complete the construction within the period of 12 months plus 2 months grace period from the date of execution of the said agreement. As per the said 'Schedule E' the due date of possession comes out to be 09.12.2020. However, till date no possession has been made.
12. That the statement of account dated 16.11.2022 issued by P.N.B Housing Finance Limited to the complainant shows that the loan sanctioned to the complainant is yet to be repaid by the complainant and the P.N.B Housing Finance Limited has not released the said plot from their mortgage. True copy of the statement of account of said loan is attached as Annexure P-6. Complainant is paying huge interest on the said loan amount and is facing huge financial burden.
13. That the respondent has failed to abide by the contractual terms stipulated in the agreement and it is in breach. The cause of action to file the complaint is continuing, in as much as despite receipt of almost entire sale consideration and lapse of almost 3 years & 8 months from the date of booking and 2 years & 5 months from the due date of handing over of possession, the respondent has failed to deliver possession of the said plot.



Therefore, the complainant is entitled to invoke Section 18 of RERA and interest for delayed possession.

14. Complainant made multiple requests to the respondent to waive at the said interest through email communications (07.11.2022 to 17.01.2023) as well as personal visits to the respondent's office but the respondent always denied the possession because the complainant refused to pay the interest charged by the respondent which is completely unjust & illegal. Copies of the said email communications are annexed as Annexure P-9 (Colly).
15. That till date the complainant has paid Rs.40,95,881.00 as per the demands raised by the Respondent without any delay on her part but the respondent has refused to give the physical possession of the said plot in lieu of non payment of the said interest. Copies of offer of possession and completion certificate are annexed as Annexure P-10 (Colly).
16. Therefore, being aggrieved by the conduct of the respondent, complainant has filed the present complaint before this Hon'ble Authority for seeking the reliefs as prayed as under.

C. RELIEFS SOUGHT

17. The complainant in her complaint has sought following reliefs:
 - (i) To direct the respondent to deliver the possession of plot with immediate effect without paying any interest charged by the respondent.



- (ii) To direct the respondent to pay interest to the complainant for the delay in delivery of the possession of plot and the delayed interest shall be the then effective State Bank of India's highest marginal cost of lending rate plus two (2) percent from the due date of delivery of possession till actual handing over of physical possession;
- (iii) To compensate the complainant for the interest paid @ 9.65% p.a. by her on the loan availed for the purchase of the said allotted apartment;
- (iv) Complaint may be allowed with costs and litigation expenses of Rs.2,50,000/-;
- (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 SUBMITTED ON BEHALF OF RESPONDENT

18. As per reply dated 19.04.2024, respondent had made following submissions: That present complaint is liable to be dismissed on the following grounds:

- (i) Present complaint filed by the complainant is not maintainable before this Hon'ble Authority as this Hon'ble Authority does not have the 'Subject Matter Jurisdiction' to try, entertain and adjudicate upon the present complaint. By way of the present complaint, the complainant is seeking relief of Compensation under Section 18 of the Real Estate (Regulatory & Development) Act,



2016 and in view of Section 71 of the said Act, a complaint for seeking relief under the aforementioned provision of law can only be entertained, tried upon and adjudicated by the Ld. Adjudicating Officer of this Hon'ble Authority.

- (ii) That complainant has cooked up a false story out of her own imagination that the construction at the site was not in line with the demands and so the bank disbursed the loan as per progress of construction mentioned in Schedule D of the said Agreement. Schedule D of the said Agreement nowhere talks about the progress of construction rather it provides for the specifications, amenities and facilities that shall be provided to the customer at the time of handing over the possession. Moreover, it is apparently evident from the "Agreement for Sale dated 09.10.2019" that the complainant had opted for a 'Time Linked Payment Plan' and not a 'Construction Linked Payment Plan', therefore, the question of construction work not being in-line with the demands does not arise at all as the complainant was required to pay the sale consideration within the timeframe specified in the said Agreement and not as per the construction work.
- (iii) That Tripartite Agreement dated 28.09.2019 which was executed between the complainant, respondent and M/s PNB Housing Finance Ltd. for sanction of Loan of Rs.28,23,000/-, nowhere



mentions that the sanctioned loan amount will be released on the basis of construction at the project site or that the demands by the respondent should be in consonance with the construction at the project site. Moreover, neither it was agreed between the complainant and respondent in any communication, nor it was anywhere mentioned in the said Agreement for Sale that payment shall be made only after approval/disbursement of loan by the Bank of the complainant. Arrangement of funds and payment of the sale consideration was the sole obligation of the complainant and the same cannot be inflicted upon any third party. At the time of entering into the said Agreement for Sale, the complainant was given the discretion to choose between different payment plans i.e., One Time payment, Construction Linked payment and Time Linked payment and the complainant herself chose to continue with Time Linked payment plan. Further, it was specifically agreed between the complainant and the respondent vide the said Agreement for Sale that in case the complainant delays in making payments of the instalments, the respondent shall levy interest upon the said period of delay.

- (iv) That respondent had rightfully and lawfully charged the delayed interest towards delay in payments of outstanding installments. Clause 2.9 of the Agreement for Sale dated 09.10.2019 provides



that delay interest shall be charged from the complainant in case of any delay in payment of the total sale consideration. The complainant has admittedly delayed in making payments towards the outstanding installments of the said unit and therefore, the said act of the respondent of charging delayed interest is totally in consonance with the terms set forth in the said Agreement for Sale. Further, the Real Estate (Regulation and Development) Act, 2016 mandates that an Allottee is under an obligation to make timely payments of the sale consideration in the manner specified in the Agreement for Sale executed between the allottee and the developer/promoter.

- (v) That Agreement for Sale executed between the complainant and the respondent provides that the estimated time of delivery was subject to the other terms and conditions of the said agreement. The respondent had sent various communications, issued several demand notices and reminder letters to the complainant on numerous occasions asking her to pay the outstanding dues as per the payment plan, however, the complainant did not give any heed to the said communications and never paid /came forward to pay the outstanding amounts within the specified timeframe. Complainant has herself defaulted in adhering to the terms of the said agreement and now she cannot attribute her faults upon the respondent.



Moreover, the said Schedule 'E' of the Agreement for Sale specifically mentions about force majeure events and govt. notifications. The alleged delay in delivery of possession was due to Force Majeure Event of Covid-19 Pandemic. In the month of March, 2020, the whole country faced massive backlash due to Covid-19 pandemic when nation-wide lockdown was imposed by the Central Government which caused reverse migration of labourers, break in supply. chain of construction material etc. and thus, all the construction activities across the country came at a halt. Keeping in view the struggles faced by the developers/builders across the Country, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of all real estate projects due to the force majeure event of Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority granted general extension to all the real estate projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic.

- (vi) That vide application form dated 03.09.2019, the complainant had applied to buy a residential plot in the project Asha Bahadurgarh Phase-II of the respondent and accordingly, complainant was



allotted unit no. A-195 in the said project of the respondent. It is further submitted that on the express request of the complainant, an On-Form Discount of Rs.74,670/- on the basic sale price was given to the complainant and thus, the Basic Sale Price was reduced from Rs.41,26,500 to Rs.40,51,830/-.

(vii) It was mentioned in Para 5 of the said Application Form that timely payment of instalments of the total sale price and other charges is the essence of the transaction between the complainant. Para 5 of the Application Form provides that *"Timely Payment of Instalments of the total sale price and other charges is the essence of this transaction. The Applicant(s) agrees that the payment as per the due dates of Payment Plan would be made by him/her before/on the due dates without any demand or notice from the Company"*. Only after being satisfied with all the terms and conditions set out in the Application Form, the complainant applied in the said project of the respondent. However, despite being aware of all the terms and conditions, the complainant repeatedly failed in making timely payments of the total sale consideration. A copy of the Application Form dated 03.09.2019 is annexed as Annexure- R-1.

(viii) That Agreement for Sale dated 09.10.2019 was executed between the complainant and the respondent for Sale of the unit/plot bearing unit no. A-195. As per the said Agreement for Sale, the complainant



had opted for 'Time Linked Payment Plan' for the payment of the installments towards purchase of the said unit. As per the said payment plan, the complainant was required to pay the instalments in the following manner:

1. Rs.4,05,183/- at the time of Booking;
2. Rs.8,10,366/- within 45 days from the date of Booking;
3. Rs.8,10,366/- within 90 days from the date of Booking;
4. Rs.8,10,366/- within 120 days from the date of Booking;
5. Rs.8,10,366/- within 150 days from the date of Booking, and;
6. Rs.4,30,183/- at the time of offer of Possession.

However, till the estimated date of delivery of Possession, i.e., 14 months from the date of execution of the agreement, the complainant had merely paid a sum of Rs.14,94,579/- out of the total Sale consideration of Rs.40,76,830/- which is not even 40% of the total sale consideration.

- (ix) It is denied that the complainant has paid Rs.40,95,881/- through P.N.B Housing Finance Ltd. as per demands raised by the respondent without any delay but the construction at site was not in line with the demands so P.N.B Housing Finance Ltd. disbursed the loan amount to the respondent as per the progress of construction mentioned in Schedule D of Buyer's Agreement. That the complainant had opted for a 'Time Linked Payment Plan' as per



which the installments were to be paid at regular intervals as described in Schedule E of the said Agreement for Sale. In furtherance of the said payment plan, the respondent issued various demand/reminder letters to the complainant requesting her to pay the installments within the prescribed period, however, the complainant never paid any heed to the said requests of the respondent and never came forward to pay the installments within the scheduled timeframe. That the respondent had issued a demand letter dated 18.10.2019 to the complainant asking her to pay two installments of Rs.8,10,366/- each which were payable within 45 days and 90 days from the date of booking. The complainant neither came forward to pay the said installments nor made any communication with the respondent in this regard. Thereupon, another demand letter dated 26.12.2019 was issued by the respondent to the complainant asking her to pay her already overdue installment of Rs.16,20,732/- alongwith fresh instalment of Rs.8,10,366/- plus delay interest of Rs.21,847/-. However, the complainant paid only a sum of Rs.10,89,396/- against the said demands. Thereafter another demand letter dated 09.09.2020 was issued to the complainant for payment of her already overdue installments of Rs.13,41,709/-alongwith fresh installment of Rs. 8,10,366/- payable within 150 days from the date of booking. The



complainant again defaulted in complying with the said demand letter and came forward to pay a sum of Rs.5,04,404/- only on 24.12.2020, i.e., after a lapse of about one and a half year from the date of issuance of demand letter. Thereafter, the respondent issued numerous demand/reminder letters including letters dated 04.01.2021, 12.04.2021, 28.06.2021, 14.09.2021 and 22.09.2021 but all efforts of the respondent in this regard went in vain. A copy of the said demand and reminder letters is annexed herewith as Annexure-R-3 (Colly). It was only in the month of October 2021 that the complainant came forward to pay an amount of Rs.7,20,750/- against her outstanding instalments.

- (x) That when the Demand Letters issued by the respondent do not mention a single word regarding the construction update, then how can the payment of instalment be stopped on the contention that demands are not in-line with construction of the project. Further, that the demands made by the respondent were in consonance with the Payment Plan opted by the complainant which was a Time Linked Payment Plan and not construction linked payment plan. Also there was no requirement for mentioning the construction status/update in the demand letters as there was no whisper about construction stage/update in the demand letters issued by the respondent and therefore, the said contention of the complainant is



liable to be out rightly rejected. The complainant has cooked up a false, frivolous and baseless story only to extort money and cause wrongful loss to the respondent.

- (xi) It is denied that P.N.B Housing Finance Ltd. in its communication through its emails to complainant mentioned the reason of not disbursing the demanded money by the respondent. It is further denied that the reason of denial was the technical visit report which P.N.B Housing Finance Ltd. usually do on every demand. It is submitted that the question of technical visit and demand being in line with construction work can only arise in cases where the buyers opt for development/construction linked payment schemes. In the instant case, the complainant opted for time linked payment plan and therefore, the said factors, i.e., technical visit and construction stage do not play any role in making payment of the sale consideration.
- (xii) That the Respondent had rightfully and lawfully charged the delayed interest towards delay in payments of outstanding installments. The agreement for sale dated 09.10.2019 categorically provides that delay interest shall be charged from the allottee (Complainant herein) in case of any delay in payment of the total sale consideration. Clause 2.9 of the said Agreement provides that "...and the Allottee hereby agrees to pay the remaining price of the



plot/unit as per the payment plan as prescribed in the schedule 'C', attached hereto, as may be demanded by the Company within the time and in the manner specified herein. However, if the Allottee delayed in paying the said payment towards any amount which is payable to the Company, the Allottee shall be liable to pay interest which shall be than effective State Bank of India's highest marginal cost of landing rate plus two percent or as otherwise notified by the competent Authority, from time to time. It is further submitted that even The Real Estate (Regulation and Development) Act, 2016 mandates that an Allottee is under an obligation to make timely payments of the sale consideration in the manner specified in the Agreement for Sale executed between the allottee and the developer/promoter. Section 19(6) and (7) of the said Act provide for the same.

- (xiii) That the respondent never waived off the delay interest charged towards delay in payment by the complainant. The complainant has failed to place on record any document or communication between the complainant and the respondent or its representatives to show that the respondent had waived off the delay interest.
- (xiv) That the complainant had informed the respondent that the Bank is not ready to pay the outstanding amount specified in the earlier demand letters for the reason that the same is inclusive of delay



interest and the Bank is not obligated to pay the delay interest quotient and therefore, the complainant requested the Respondent to issue a demand/reminder letter without including the delay interest part. That only upon the express request of the complainant, the respondent had issued that Reminder Letter without mentioning the Delay Interest amount, however, the complainant is now using the said document to fulfill her ulterior motives and malafide intention.

- (xv) That the said project of the respondent is registered with the Haryana Real Estate Regulatory Authority and all the acts/deeds of the respondent company must be in consonance with the law laid down under the said Act. Moreover, till the grant of Completion Certificate, the respondent regularly filed its Quarterly Progress Reports, Monthly Reports as well as other Compliance Reports before this Hon'ble Authority and the respondent cannot file its quantitative data without firstly procuring all necessary transaction proofs, therefore, the alleged statement of the complainant that the respondent had waived off the delay interest does not hold any veracity and as such, the present complaint is liable to be dismissed on this very ground.
- (xvi) That Schedule 'D' of the said Agreement for Sale provides for the Specifications, Amenities and Facilities that were to be provided in the said unit of the complainant at the time of handing over



possession and execution of conveyance deed of the said unit in favour of the complainant. The development of the said project of the respondent has already been completed and respondent has received the Completion Certificate from the Directorate of Town and Country Planning, Haryana and this fact in itself is sufficient to show that the Respondent has fulfilled its obligations as mentioned in Schedule 'D' of the said agreement.

- (xvii) It is denied that the cause of action to file the complaint is continuing inasmuch as despite receipt of almost entire sale consideration and lapse of almost 3 years & 8 months from the date of booking and 2 years & 5 months from the due date of handing over the possession, the respondent has failed to deliver possession of the said plot. It is vehemently denied that the complainant is entitled to invoke section 18 of RERA and interest for delayed possession. That the complainant is not entitled to invoke any provision of the Real Estate (Regulation & Development) Act, 2016 as the respondent has not violated any provision of the said Act. Moreover, it is the complainant who has violated Section 19 (6) & (7) of the said Act by not making payment of the outstanding dues within the timeframe specified in the Agreement for Sale executed between her and the respondent.



- (xviii) It is denied that the complainant made multiple requests to the respondent to waive the said interest through email communication (07.11.2022 to 17.01.2023) as well as personal visits to the respondent's office but the respondent always denied the possession because the complainant refused to pay the interest charged by the respondent which is completely unjust & illegal. That the delay interest levied by the respondent upon the said Unit of the complainant was totally legitimate and in accordance with the provisions of the Real Estate (Regulation & Development) Act, 2016 and also the Agreement for Sale dated 09.10.2019, therefore, the respondent cannot waive off the said amount of interest.
- (xix) That the email communications made by the complainant were duly replied by the representatives of the respondent. The complainant had sent an email dated 17.01.2023 to one of the representatives of the respondent and the said email was duly replied by the respondent on 18.01.2023 whereby she was informed that until and unless the outstanding dues are cleared, the respondent cannot handover possession of the said unit to the complainant, however, this important fact has been concealed by the complainant. A copy of the said email dated 18.01.2023 sent by the respondent's representative is annexed herewith as Annexure-R-5.



- (xx) That the complainant has defaulted in making timely payments of the sale consideration on numerous occasions and the respondent has received the said total amount of Rs.40,95,881/- only in the month of February, 2024 and still the amount of delay interest has not been paid by the complainant yet, due to which the possession of the said unit is not handed over to her. The respondent has issued various demand/reminder letters including letters dated 22.05.2023 and 16.06.2023 asking the complainant to come forward to pay the outstanding dues and get the Conveyance Deed of the said unit registered in her name. however, the complainant neither complied with the said letters nor made any communication in this regard. Copies of the said letters dated 22.05.2023 and 16.06.2023 are annexed herewith as Annexure-R-6 (Colly).
- (xxi) It is denied that the respondent unlawfully putting condition to pay the interest which is completely unjust and illegal. It is denied that the complainant is entitled for interest as per Rule 15 of the RERA Rules, 2017 from the due date of delivery of possession till actual handing over of physical possession. That till the estimated date of delivery of Possession, i.e., 14 months from the date of execution of the Agreement, the complainant had merely paid a sum of Rs.14,94,579 out of the total Sale consideration of Rs.40,76,830/- which is not even 40% of the total sale consideration. That it was



specifically mentioned in the said Agreement for Sale dated 09.10.2019 that the delivery of possession of the said unit was subject to timely payment of the sale consideration by the complainant. Under no stretch of imagination can an allottee be given possession of a unit without receipt of the total sale consideration and outstanding dues.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENTS

19. During oral arguments, learned counsel for the complainant reiterated the submissions as stated in the complaint. Complainant has taken the possession of the plot on 13.10.2024 and awaiting the execution of conveyance deed. Authority put specific question to the ld counsel for complainant that what steps complainant took after issuance of valid offer of possession letter dated 12.02.2023? To this ld counsel for complainant stated that complainant was always ready to take the possession however, the complainant was not satisfied with the unjustified interest levied by the respondent. Regarding the interest part, he stated that complainant had communications with the respondent to waive off the interest through meetings with officials of the respondent and via emails which are attached as page no. 101-103.



Also, respondent waived off the interest which can be inferred from letter dated 14.01.2022 attached at page no.95 of the complaint book.

On the other hand, Mr. Shrey Sharma, reiterated the pleadings as mentioned in the reply and stated that offer of possession issued by the respondent was valid one. It is the complainant who defaulted in making timely payments, therefore, interest levied by the respondent is also valid as per the terms of agreement to sell. Regarding the letter dated 14.01.2022, he stated that said letter is reminder letter not the demand letter, further referred to reminder letter dated 09.03.2022, which clearly show that interest is levied. If any waiver of interest was given by the respondent, that has to be in writing and not merely verbal communications. Regarding the execution of conveyance deed, he stated that Authority vide its order dated 21.10.2024, mentioned that after deciding the receivables and payables, deed will be executed.

F. ISSUES FOR ADJUDICATION

20. Whether offer of possession dated 12.02.2023 was a valid offer of possession?
21. Whether the complainant is entitled to possession of plot alongwith delay interest in terms of Section 18 of RERA Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

22. In light of the facts of the case and perusal of document placed on record, Authority observes that admittedly complainant booked the plot



in the project of respondent namely; 'ASHA Bahadurgarh Phase-II' at Sector-36, Bahadurgarh Distt- Jhajjar, Haryana-124507 and complainant was issued allotment letter dated 09.09.2019 whereby she was allotted plot no. A-195, Phase-II, ad-measuring carpet area 131 sq. yd. in said project. Consequently, agreement for sale was executed with respect to the said unit on 09.10.2019. Till date complainant had paid an amount of ₹40,95,881/- against the total sale consideration of ₹40,51,830/-.

As per clause Schedule E of the agreement to sale dated 09.10.2019, possession of said plot was to be given within a period of 12 months + 2 months of grace period from the date of execution of agreement to sale subject to conditions mentioned therein. Perusal of said clause reveals that respondent was under an obligation to handover possession till 09.12.2020. The said timeline was subject to Force Majeure, Court Orders, Government Policy/Guidelines, Decisions affecting the project. In this regard, respondent had taken plea of Force Majeure Event that is Covid-19 Pandemic, nation-wide lockdown imposed by the Central Government which caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came at a halt. Further, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of all real estate projects due to the force majeure event of



Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority granted general extension to all the real estate projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic.

In this regard Authority observes that as per reasoning mentioned above deemed date to handover possession was 09.12.2020. As per HRERA notification dated 26.05.2020 and 02.08.2021, an extension of 9 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject plot is being allotted to the complainant is 09.12.2020, i.e, after 25.03.2020, therefore an extension of 9 months is to be given over and above the due date of handing over possession in view of above said notifications, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date of handing over of possession comes out to 09.09.2021. Till that date respondent did not hand over the possession of the plot to the complainant.

23. Now, the issue which remains in this case is that whether the offer of possession dated 12.02.2023 was a valid offer of possession or not? Complainant alleges that complainant did not accept the said offer of



possession because same was accompanied with unjustified and illegal demands of ₹4,84,282/-. On the other side, stand of the respondent is that complainant had opted for time linked payment plan and not construction linked payment plan. Respondent issued various reminders and demand letters to the complainant for paying the amount towards the plot. However, complainant continuously defaulted in making payments. Therefore, as per terms of the agreement to sell the interest levied by the respondent is ledged and complainant is liable to pay the same. Moreover, respondent had received the occupation certificate from the competent authority on 02.01.2023, therefore, offer of possession dated 12.02.2023 is valid offer of possession.

In this regard Authority deems it appropriate go through the terms and condition of the agreement to sell dated 09.10.2019. As per agreement of sell, "*Payment Plan shall mean the Payment Plan annexed to this agreement as Schedule C*". Schedule C reveals that the payment is **Time linked Plan** and not the construction linked plan. Therefore, the plea of the complainant that plan is construction linked and therefore, PNB Housing Finance did not disbursed the amount to the respondent builder is rejected.

24. Now, analyzing the Payment Plan, it depicts that on booking of plot complainant had to pay ₹4,05,183/-, and with regard to that complainant paid the same on 03.09.2019. Second amount of ₹810366/-



was to be paid within 45 days from the date of booking, i.e. till 18.10.2019. However, complainant did not pay the said payment and accordingly respondent issued demand letter dated 18.10.2019, intimating about the same and with regard to payment of ₹8,10,366/- to be paid within 90 days from the date of booking, i.e, till 02.12.2019. Demand letter dated 26.12.2019 was issued by the respondent to the complainant to pay already overdue installment of ₹16,20,732/- alongwith fresh instalment of ₹8,10,366/- plus delay interest of ₹21,847/-. However, the complainant paid only a sum of ₹10,89,396/- against the said demands on 26.12.2019.

Thereafter another demand letter dated 09.09.2020 was issued to the complainant for payment of her already overdue installments of ₹13,41,709/- alongwith fresh installment of ₹8,10,366/-payable within 150 days from the date of booking. The complainant again defaulted in complying with the said demand letter and on 29.12.2020 complainant paid sum of ₹5,04,404/- only. Thereafter, the respondent issued numerous demand/reminder letters dated 04.01.2021, 12.04.2021, 28.06.2021, 14.09.2021 and 22.09.2021 but complainant did not pay any heed to said demand letters. Only on 08.10.2021, complainant paid an amount of ₹7,20,750/- and rest of payments were made in year 2022 and 2023. Till 27.02.2023, complainant paid 40,95,881/-. The sequence of payments, reveals that before the deemed date of possession, i.e.,



09.09.2021, complainant had paid only an amount of ₹19,98,983/- against the sale consideration that is 49.9 % of total sale consideration. However, as per the payment plan willingly chosen by the complainant depict that most of the payments were to paid before 31.01.2020. This clearly shows that complainant did not adhere to the payment plan opted by her.

Authority observes that as per clause 2.9 of apartment buyer agreement, it is expressly written that if the allottee delays in paying the payments towards any amount which is payable to the company, then allottee shall be liable to pay interest which shall be then effective @ of State Bank of India highest marginal cost of lending rate plus two per cent.

Also, in reference to this reliance can be place upon Section 19 of RERA Act of 2016, which mentions about Rights and Duties of Allottees. Relevant Section is as under:

Section 19: Rights and duties of allottees:

6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.



(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

Authority vide its order dated 21.10.2024, directed the respondent to submit details of payments made by the complainant towards the purchase of unit in question alongwith interest (if any) on account of delay in making payments. In compliance of the same, respondent had filed an application dated 07.01.2025, mentioning that till date complainant had paid an amount of ₹40,95,881/- and on account of non payment of the outstanding dues by the complainant an interest amount of ₹4,84,282/- stands due on part of complainant. Relying upon the Section 19 (6), (7) of RERA Act, Clause 2.9 of Agreement to sell and application dated 07.01.2025 filed by the respondent, interest levied by the respondent is valid and hence, the offer of possession dated 12.02.2023 issued by the respondent is valid one and complainant is liable to pay the said interest.

25. Authority observes that deemed date of possession in the present case was 09.09.2021, possession of plot was offered to complainants on 12.02.2023 and complainant took physical possession of plot on 13.10.2024 (as per the submissions made during the hearing). There is delay of 1 year, 5 months, 3 days in offering possession by the



respondent to the complainant. Complainant herein is entitled to delayed possession charges which is 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".

26. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

27. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as



on date, i.e., 20.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

28. Payment of delayed possession charges at the prescribed rate of interest. Interest for every month of delay, till the handing over of possession at such rate, as it has been prescribed under Rule 15 of the rules.

Rule 15 has been reproduced 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".

29. In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant is entitled for the delay interest from 09.09.2021 (deemed date of possession) to 15.02.2023 (i.e, the date of valid offer of possession). Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of offer of possession at the rate of 11.10% till date and said amount works out to Rs.4,49,576/- 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 12.02.2023(in Rs.)
1.	405183/-	09.09.2021	64321/-
2.	1089396/-	09.09.2021	172936/-
3.	504404/-	09.09.2021	80072/-
4.	720750/-	08.10.2021	108059/-
5.	272300/-	16.05.2022	22607/-
6.	2,00,000/-	18.01.2023	1581/-
	Total = Rs.31,92,033 /-		Rs.4,49,576/-.

Payments of ₹136150/- on 22.02.2023, ₹367197/- on 26.02.2023 and ₹400501/- on 27.02.2023 are made after valid offer of possession dated 15.02.2023, therefore, no delay interest will be awarded to the abovementioned payments.

30. Execution of conveyance deed has not been claimed by the complainant in reliefs clause. However, during the course of hearing on 21.10.2024, Authority observes that complainant is interested in possession of the plot and execution of conveyance deed. Deed will be executed only after deciding the payables and receivables. Both the parties were directed to submit their payments details. In compliance of said order, both the parties have filed their respective calculations. As Authority decides the interest amount as per the reasoning given above,



therefore, both the parties are directed to discharge their respective obligations.

31. Complainant is seeking ₹2,50,000/- as cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

H. DIRECTIONS OF THE AUTHORITY


32. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act of 2016 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 delayed possession interest of Rs.4,49,576/- to the complainant towards delay caused in



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

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]

