



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>3102 of 2022</b>
<b>Date of filing:</b>	<b>22.11.2022</b>
<b>Date of first hearing:</b>	<b>07.02.2023</b>
<b>Date of decision:</b>	<b>23.01.2025</b>

Anand Kumar Maheshwari S/o Sh. Ram Narain  
R/o House No. 423, Sector-13-P  
Hisar-125005

....COMPLAINANT

VERSUS

Aarcity Builders Pvt Ltd  
301, Krishna Apra Business Square,  
Netaji Subhash Chandra Place, District  
Centre, Pitampura  
New Delhi- 110034

....RESPONDENT

<b>Complaint no.:</b>	<b>3103 of 2022</b>
<b>Date of filing:</b>	<b>22.11.2022</b>
<b>Date of first hearing:</b>	<b>07.02.2023</b>
<b>Date of decision:</b>	<b>23.01.2025</b>

Anand Kumar Maheshwari S/o Sh. Ram Narain  
R/o House No. 423, Sector-13-P  
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Aarcity Builders Pvt Ltd  
301, Krishna Apra Business Square,  
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Centre, Pitampura  
New Delhi- 110034

....RESPONDENT

<b>Complaint no.:</b>	<b>3104 of 2022</b>
<b>Date of filing:</b>	<b>22.11.2022</b>
<b>Date of first hearing:</b>	<b>07.02.2023</b>
<b>Date of decision:</b>	<b>23.01.2025</b>

Surender Kumar S/o Sh. Ram Kumar  
R/o House No. 128, Prem Nagar  
Hisar-125005

....COMPLAINANT

VERSUS

Aarcity Builders Pvt Ltd  
301, Krishna Apra Business Square,  
Netaji Subhash Chandra Place District  
Centre, Pitampura  
New Delhi- 110034

....RESPONDENT

**CORAM:**

<b>Nadim Akhtar</b>	<b>Member</b>
<b>Dr. Geeta Rathee Singh</b>	<b>Member</b>
<b>Chander Shekhar</b>	<b>Member</b>

**Present: -** Mr. Anurag Jain, Counsel for the complainants through  
VC in all cases.  
Mr. Venkat Rao, Counsel for the respondent through  
VC in all cases.

**ORDER (NADIM AKHTAR-MEMBER)**

1. Captioned complaints are taken up together for hearing as they involves same issues pertaining to same project-'Aarcity Regency Park, Hisar' and against one respondent only. This order is passed



taking complaint no. 3102/2022-Anand Kumar Maheshwari vs Aarcity Builders Pvt Ltd as lead case.

2. Present complaint was filed on 22.11.2022 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

#### A. UNIT AND PROJECT RELATED DETAILS

3. 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 of complaint no. 3102/2022	Details of complaint no. 3103/2022	Details of complaint no. 3104/2022
1.	Name of the project	Aarcity Regency Park, Hisar	Aarcity Regency Park, Hisar	Aarcity Regency Park, Hisar
2.	RERA	Registered.	Registered.	Registered.

	registered/not registered			
3.	DITCP License no.	295 of 2017 dated 13.10.2017	295 of 2017 dated 13.10.2017	295 of 2017 dated 13.10.2017
	Licensed area	8.181 acres	8.181 acres	8.181 acres
4.	Unit no.	503, Tower-D	104, Tower-D	102, Tower-B
5	Unit area	1625 sq. ft.	1625 sq. ft.	1272 sq. ft.
6.	Date of booking	20.10.2011	20.10.2011	05.05.2012
7.	Date of builder buyer agreement	16.08.2012	16.08.2012	21.04.2014 with original allottee  Endorsement in favour of complainant on 31.08.2017.
8.	Due date of offer of possession (36+3 months)	16.11.2015	16.11.2015	21.07.2017
9.	Possession clause	Clause 18 The Developer Company shall endeavor to give possession of the Unit to the Allottee(s) within a period of 36 months from the date of execution of Allotment Letter with a	Clause 18 Same as of 3102/2022	Clause 18 Same as of 3102/2022

	<p>further grace period of 90 (ninety) days subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, non-availability or scarcity of steel and/or cement and/or other general building materials and/or water supply and/or electric power or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the Developer Company, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part/full completion (occupancy) certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer Company and subject to receipt of complete dues and other charges as per installment</p>		
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		plan opted by the Allottee(s). The Allottee(s) shall not be entitled to any compensation on the grounds of delay in possession due to reasons beyond the control of the Developer Company. The Developer Company on completion of the development/construction shall issue final call notice (offer of possession) to the Allottee (s), who shall within 30 days thereof, remit all dues and take possession of Unit after registration of sale deed. The date mentioned on the final call notice shall be deemed to be the date of offer of possession.		
10.	Total sale consideration	₹ 43,04,438/-	₹ 44,69,938/-	₹ 39,08,800/-
11.	Amount paid by complainants	₹ 30,02,434/-	₹ 31,06,971/-	₹ 23,89,990/-
12.	Offer of possession	22.08.2022	22.08.2022	Not made.
13.	Date of Occupation Certificate	21.06.2023	21.06.2023	21.06.2023

## B. FACTS OF THE COMPLAINT

4. Facts of complaint are that complainant had booked a flat in the project- Regency Park, Hisar of the respondent by paying Rs 3,50,000/- on 07.10.2011. Thereafter, Builder buyer agreement was executed between the parties on 16.08.2012 for unit no. D-503, having area of 1625 sq. ft. As per clause 18 of it, the possession of unit was supposed to be delivered upto 16.11.2015. In total, complainant had paid an amount of Rs 30,02,434/- against total sale consideration of Rs 43,04,438/-.
5. That in the month of December, 2014, the complainant visited the site of construction and found that the work is at halt and only slab of fourth floor has been casted. A letter dated 28.02.2017 was received by the complainant, wherein the respondent assured the allottees that construction is going to be resumed. Copy of letter is annexed as Annexure C-4.
6. That on 22.08.2022, complainant received 'Offer for fit out letter' wherein it was mentioned that respondent had applied for occupation certificate and in the meantime complainant may start internal civil work of the allotted unit. Copy of letter dated 22.08.2022 is annexed as Annexure C-8.
7. That on 05.09.2022 respondent has issued a legal demand cum cancellation notice wherein it has been mentioned that the



complainant is liable to pay a total amount of Rs 10,93,589/- by 20.09.2022 failing which they shall proceed towards cancellation of the unit in question. Copy of letter is annexed as Annexure C-9. Complainant on receipt of same visited the office of respondent and stated that he is willing to pay the balance amount however the account be reconciled considering interest on delayed delivery of possession.

8. That on 20.11.2022, the complainant had given a written request to the respondent to the effect that he is ready to pay balance sale consideration subject to the condition that delay of around 7 years be adjusted in it. Copy of request letter is annexed Annexure C-10.
9. That the complainant has paid a sum of Rs 30,02,434/- to the respondent. As on today, complainant is not liable to pay Rs 1,50,000/- towards covered car parking charges and Rs 25,000/- towards club membership charges as the construction of the buildings has not been commenced.
10. That the respondent has not handed over possession of the unit till date in terms of obligations imposed upon it in flat buyer agreement dated 16.08.2012. Hence, the present complaint.

### **C. RELIEF SOUGHT**

11. Complainant in his complaint has sought following relief:





- i. Direct the respondent to pay interest at the rate of 11.5% which is prescribed under Rule 15 of RERA Rules i.e. @highest marginal cost of lending rate prescribed by State Bank of India plus 2% for every month of delay, till the physical delivery of possession of flat in question to the complainant on the amount paid towards the sale consideration of the flat.
- ii. To impose penalty upon the respondents for causing harassment and agony as envisaged under the Act and Rules from the respondent.
- iii. Respondent at this stage be restrained from recovering Rs 1,50,000/- towards covered car parking charges and Rs 25,000/- towards club membership charges as the construction of the said building has not yet commenced.
- iv. Any other relief which this Hon'ble Authority deems fit, be granted in favor of complainant.

#### **D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 26.04.2023 pleading therein:

12. That on 16.08.2012, the complainant entered into an agreement with respondent for allotment of apartment no. 503, Tower-D in the 'Regency Park Hisar' located at Sector 11A and 17 Delhi Hisar road, Hisar. On numerous occasions, the complainant was requested to pay the sale consideration but he chose not even to respond to



demand letters dated 11.10.2014, 15.07.2015, 19.10.2016, 14.04.2022, 29.04.2022, 02.05.2022, 18.06.2022, 31.08.2022. True copies of demand notices is annexed as Annexure R-1.

13. That on 22.08.2022, respondent has issued a fit out letter to the complainant informing that the respondent had floated a scheme of waiving the payment for the balance internal work. However, complainant did not make any payment subsequent to demand letter dated 22.08.2022.
14. That on 05.09.2022 legal demand cum cancellation notice was sent to the complainant as a last opportunity with a request to make the remaining payment towards the unit within 15 days of the receipt of said letter. In case complainant fails to make the remaining payment within the timeline prescribed then the unit in question shall proceed towards cancellation and earnest money shall stand forfeited.
15. That real estate project suffered on account of non-payment of dues by the complainant and it delayed the development process for other allottees. In these circumstances, the unit in question has been cancelled on 21.11.2022 and the earnest money stand forfeited in favor of the complainant. Copy of cancellation letter is annexed as Annexure R-5.



16. That complainant is not an allottee in terms of Section 2 (d) of RERA Act, 2016 because the unit in question had been cancelled on 21.11.2022.
17. That the complainant invested in the project for speculative purposes as the complainant had booked two flats in the project of respondent and has failed to make the timely payments.
18. The committed date of possession was subject to force majeure circumstances enumerated in buyer agreement. Occupation certificate has already been applied for the tower in question and same is awaited.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT**

19. During oral arguments learned counsel for the complainant insisted upon possession of booked flat alongwith delay interest stating that complainant wants to stay with the project and is interested only in possession of booked flat. He further stated that respondent till date has not offered possession of unit alongwith proper statement of accounts inclusive of delay interest. Learned counsel for the respondent reiterated arguments as were submitted in written statement and further submitted that project had already received occupation certificate on 21.06.2023. Further, he referred to application filed in registry on 17.01.2025 wherein it has been



requested that complaint case be decided in toto adjudicating all the issues involved.

**F. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.**

**F.1 Objections raised by the respondent stating that complainant herein is an investor and have invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains.**

The complainant herein is an allottee/homebuyers who has made a substantial investment from his hard earned savings under the belief that the promoter/real estate developer will handover possession of the booked unit but his bonafide belief stood shaken when the promoter failed to handover possession of the booked unit till date without any reasonable cause. At this stage, complainant has approached this Authority for seeking possession of flat alongwith delay interest in terms of provisions of RERA Act,2016 being allottees of respondent-promoter. As per definition of allottee provided in clause 2(d) of RERA Act,2016, present complainant is duly covered in it and is entitled to file present complaint for seeking the relief claimed by him. Clause 2(d) of RERA Act,2016 is reproduced for reference:-

*“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”.*

Complainant has been allotted flat in the project of respondent by the respondent/promoter itself and said fact is duly admitted by the respondent in the flat buyer agreement dated 16.08.2012. Also, the definition of allottee as provided under Section 2 (d) does not distinguish between an allottee who has been allotted a unit for consumption/self utilization or investment purpose. So, the plea of respondent to dismiss the complaint on the ground that complainant herein is an investor does not hold merit and same is rejected.

#### **G. ISSUES FOR ADJUDICATION**

20. Whether the complainant is entitled to possession of booked unit alongwith delay interest in terms of Section 18 of Act of 2016?

#### **II. OBSERVATIONS AND DECISION OF THE AUTHORITY**

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

(i) Admittedly, complainant in this case had purchased the allotment rights qua the flat in question in the project of the respondent in the year 2012 against which an amount of ₹ 30,02,434/- already stands paid to the respondent. Out of said



paid amount, last payment of Rs 3,26,387/- was made to respondent on 05.11.2014 by the complainant which implies that respondent is in receipt of total paid amount since year 2014 whereas fact remains that no valid offer of possession of the unit in question has been made till date.

(ii) In the written statement submitted by the respondent, it has been stated that the offer of possession was made to complainant on 22.08.2022 which was not accepted by complainant and as a consequence of non-payment/acceptance of said offer, the allotment rights of complainant got terminated by way of cancellation letter dated 21.11.2022. Now, the complainant is not entitled to possession of booked unit. It is pertinent to mention here that the issue of cancellation letter 21.11.2022 and offer of possession dated 22.08.2022 have already been decided by the Authority vide its order dated 25.01.2024 in favour of complainant by quashing the cancellation letter. Relevant part of order dated 25.01.2024 is reproduced below for reference:-

*"Arguments of both parties have been heard and relevant record has been perused. It is pertinent to mention here that status quo with respect to allotment rights of unit was ordered vide order dated 07.02.2023 against cancellation letter dated 26.11.2022 in order to avoid further complications and as of today, no third party rights have been created by the*



respondent. With respect to the cancellation, the Authority observes that possession was supposed to be delivered by 16.11.2015 in terms of builder buyer agreement but the respondent had offered only a fit out offer on 22.08.2022. A demand for Rs 10,93,589/- was also created. The said offer was not accompanied with occupation certificate. The respondent itself, at the time of hearing admits the receipt of occupation certificate on 21.06.2023; meaning thereby that the impugned offer of possession in year 2022 was not a valid offer. Complainant was not bound to accept the offer and to pay remaining amount in year 2022. Therefore, the cancellation letter dated 26.11.2022 holds no sanctity in eyes of law. It stands quashed.

Facts reveal that respondent has not offered valid offer of possession after receipt of occupation certificate till date to complainant. Complainant is interested in having possession of unit alongwith delay interest. Therefore, respondent is directed to issue offer of possession to complainant alongwith statement of receivables and payables strictly made as per provisions of RERD Act, 2016 and HRFERA Rules, 2017. Said statement of receivables and payables be mailed to complainant within next 7 days from today. Thereafter, respondent should arrange a physical site visit of complainant on 05.02.2024 for inspection of unit. Complainant is at liberty to point out deficiencies, if any, in writing to respondent after said site visit. Respondent shall file statement of receivables and payables and list of deficiencies in registry atleast two weeks prior to next date of hearing.

Perusal of file reveals that complainant has prayed for restraining the respondent from charging car parking charges Rs 1,50,000/- and Club membership charges Rs 25,000/- for the reason that these facilities are not being provided by respondent at site. In reply, the ld. counsel for respondent submitted that one car parking is attached alongwith unit, charges are being taken for the additional car parking. He further ensured that charges for these facilities will be added in



*statement of receivables and payables only if same are being provided at site."*

(iii) As discussed in aforesaid paragraph, the complainant was not obligated to accept the offer of possession dated 22.08.2022. Fact remains that Occupation Certificate for the unit in question has been obtained by respondent on 21.06.2023. After obtaining of said occupation certificate, the respondent did not offer possession to the complainant and accordingly, respondent vide order dated 25.01.2024 was directed to offer possession alongwith delay interest to the complainant. As such, no concrete offer of possession with proper statement of account inclusive of delay interest in terms of HREIRA Rules, 2017 has been made till date to the complainant. Further, Authority observes that the builder buyer agreement was executed between the parties on 16.08.2012 and as per terms of clause 18 of it, the possession was to be delivered upto 16.11.2015. Fact remains that valid offer of possession has not been offered to complainant till date.

(iv) Another issue which remains to be adjudicated in covered car parking charges of Rs 1,50,000/- and club membership charges of Rs 25,000/-. It is the stand of complainant that complainant is not liable to pay these charges as construction of





these building have not even commenced. Respondent has not rebutted the claim of complainant, however, it has been orally assured that charges will not be asked till the time these facilities are operational in project. In this regard, Authority observes that respondent is not entitled to claim these charges till the facilities of car parking and club is operational at site. Though complainant will remain liable to pay them as and when facilities get developed at project site.

22. In the present complaint, the complainant intends to continue with the project and are 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”.*

23. 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;

24. Complainant herein is claiming delay interest at the rate of 11.5%. It is pertinent to mention here that the legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

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. 23.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.

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

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the*



*rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

27. The Authority observes that the deemed date of possession in terms of builder buyer agreement is 16.11.2015. The respondent has not offered valid offer of possession of unit till date. Now, after receipt of occupation certificate on 21.06.2023, the respondent is in position to offer possession to the complainant. Complainant himself is also interested in getting the possession of the booked unit. He does not wish to withdraw from the project. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the unit the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 16.11.2015 to the date on which a valid offer is sent to him duly supported with occupation certificate.



28. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 11.10% in both complaints as per detail given in the tables below:

**Complaint no. 3102/2022-** Complainant claims to have paid an amount of Rs 30,02,434/- as per page 15 of complaint file. However, as per details of paid amount mentioned at page 21-22 of complaint file, total paid amount comes to Rs 29,74,250/-. In support of it, final demand notice dated 04.05.2019, annexed at page 53 of complaint is referred. Perusal of said demand notice reveals that one amount of Rs 28,184/- has not been detailed out by complainant in its table of paid amount. As such total sum of Rs 29,74,250 + Rs 28,184/- = Rs 30,02,434/- which is claimed paid amount by complainant. But there is no specific date of payment of Rs 28,184/-. In absence of it, the date of final demand notice, i.e., 04.05.2019 is taken as date of receipt of amount of Rs 28,184/-.

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 23.01.2025
1.	₹ 29,74,250/-	16.11.2015	30,36,400/-
2.	₹ 28,184/-	04.05.2019	17,931/-
	Total = ₹ 30,02,434/-		₹ 30,54,331/-
3.	Monthly interest		₹ 27,392/-

**Complaint no. 3103/2022-** Complainant claims to have paid an amount of Rs 31,06,971/- as per page 15 of complaint file. However, as per details of paid amount mentioned at page 21-22 of complaint file, total paid amount comes to Rs 30,77,285/-. In support of it, final demand notice dated 25.04.2019 annexed at page 53 of complaint is referred. Perusal of said demand notice reveals that one amount of Rs 29,686/- has not been detailed out by complainant in its table of paid amount. As such total sum of Rs 3077285+ Rs 29686 =Rs 31,06,971/- which is claimed paid amount by complainant. But there is no specific date of payment of Rs 29,686/-. In absence of it, the date of final demand notice, i.e., 25.04.2019 is taken as date of receipt of amount of Rs 29,686/-.

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 23.01.2025
1.	₹ 30,77,285/-	16.11.2015	31,41,588/-
2.	₹ 29,686/-	25.04.2019	18,967/-
	Total - ₹ 31,06,971/-		₹31,60,555 /-
3.	Monthly interest		₹ 28,346/-

**Complaint no. 3104/2022-** Complainant in present case is the subsequent allottee who stepped into shoes of original allottee vide endorsement dated 31.08.2017. Builder buyer agreement was executed between the original allottee and respondent on 21.04.2017 and as per terms of clause 18 of it, the



possession was supposed to be delivered upto 21.07.2017. Herein, it is the argument of respondent that complainant is not entitled to the delay interest in the same terms at par with original allottee. I.d. Counsel for respondent requested that date on which complainant has stepped into the shoes of original allottee, delay interest, if any be granted, from said date only. In this regard, Authority observes that complainant herein stepped into shoes of original allottee on 31.08.2017, i.e., after 40 days of expiry of deemed date of possession. It is to mention here that RERA Act, 2016 in terms of proviso to section 18(1) has created statutory right of delay possession charges in favour of the allottees. Moreover, the term subsequent allottee has been used synonymously with the term allottee in the Act in section 2 (d) of the Act.

Said section is reproduced below for reference:-

*"2 In this Act, unless the context otherwise requires- (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"*

Though when the Act came into force, many home buyers who were stuck in delayed projects were uncertain as to when the builder will handover possession of the subject unit and being distressed by the said situation, they were forced to sell their unit. Now, the question which arises is that whether the transfer of unit in favour of subsequent allottee creates a bar for the later to claim delay possession charges. The answer is in the negative. In the case



in hand also, though the builder buyer's agreement between the parties was executed prior to the Act coming into force but the endorsement was made in favour of the subsequent allottee when the Act became applicable. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Although at the time of endorsement of his name in the builder buyer's agreement, the due date of possession had already lapsed but the subsequent allottee as well as the promoter had the knowledge of the statutory right of delay possession charges being accrued in his favour after coming into force of the Act. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the rules applicable to the subsequent allottee. Moreover, the authority cannot ignore the settled principle of law that the waiver of statutory rights is subject to the public policy and interest vested in the right sought to be waived as reiterated by Hon'ble Supreme Court of India in Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co. (AIR 1959 SC 689). In the present situation, there is nothing which can prove that such right was waived off by the subsequent allottees for either of the two reasons quoted above. In simple words, neither they have got any private benefit by waiving of their right nor does it involve any element of public interest. Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after



coming into force of the Act, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement. Accordingly, delay interest herein is awarded to the complainant w.e.f 21.07.2017 till the time a valid offer of possession is being sent to you.

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 23.01.2025
1.	₹ 23,89,990/-	21.07.2017	19,94,391/-
	Total = ₹ 23,89,990/-		₹19,94,391 /-
2.	Monthly interest		₹ 21,805/-

29. Accordingly, the respondent is liable to pay the upfront delay interest alongwith monthly interest as described in the aforesaid tables. Said amount shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

30. I.d. counsel for complainant has neither argued nor pressed upon the reliefs claimed in clause ii of the relief sought.





## I. DIRECTIONS OF THE AUTHORITY

31. 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 calculated in para no. 28 to the respective complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest calculated in para no. 28 shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.
- (ii) Respondent is directed to offer possession to the respective complainant alongwith statement of account including therein the delay interest calculated in this order within 45 days of uploading of this order.
- (iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
- (iv) Respondent is not entitled to raise charges of car parking and club membership unless the facilities are made operational at site.



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

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

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
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DR. GEETA RATHEE SINGH  
[MEMBER]

  
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NADIM AKHTAR  
[MEMBER]