



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	860 of 2024
Date of filing:	28.06.2024
Date of first hearing:	20.08.2024
Date of decision:	06.03.2025

Sanjay Malik S/o Late Sh. Attar Singh Malik,
R/o D-176, Divine City,
Sector-13, GT Road,
Ganaur, Distt. Sonipat.

....COMPLAINANT

VERSUS

M/s Rama Krishna Buildwell Pvt Ltd,
Divine City, Ganaur (Sonipat)
Regd Office :B-79, 2nd Floor,
Wazirpur Industrial Area, Delhi- 110052

.... RESPONDENT

CORAM:	Parneet S Sachdev	Chairman
	Nadim Akhtar	Member
	Chander Shekhar	Member

Present: -Mr. Akshat Mittal, counsel for the complainant through VC.

Mr. Abhay, Proxy counsel on behalf of Mr. Ranjeet Mishra,
counsel for the respondent, through VC.

ORDER (PARNEET S SACHDEV -CHAIRMAN)

1. Present complaint has been filed on 28.06.2024 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	"Divine City", Nh-1 Ganaur, Haryana.
2.	Plot no. and area	D-176, measuring 346.759 Sq. Yds.
3.	Date of allotment	12.04.2018
4.	Date of Builder Buyer Agreement/ Agreement to Sell	12.04.2018
5.	Due date of offer of possession	12.04.2021 (addressed in Paragraph 9 of the order)



6.	Possession clause	<i>16. The Promoter shall endeavour to give allotment of the plot to the buyer as early as possible with a reasonable extension of time for possession, subject to Force Majeure circumstances and reasons beyond the control of the company.</i>
7.	Basic sale price	₹ 26,15,598/-
8.	Amount paid by complainant	₹34,45,761/- (as per receipts attached with complaint file)
9.	Offer of possession	Yes, on 17.04.2018 (as per Conveyance Deed)

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

1. Facts of the present case is that the complainant is a resident of Plot No. 176, Block D, located in the residential plotted colony known as "Divine City," situated at Sector 13, GT Road, Gannaur, District Sonipat. The development rights for the said colony have been granted to the respondent company.
2. The complainant applied to the respondent/promoter for the allotment of a plot via an application dated 11.04.2017, and was subsequently allotted a unit as per the allotment letter dated 12.04.2018. Copy of allotment letter dated 12.04.2018 is annexed as Annexure 1.

3. Following the allotment, the complainant entered into a Plot Buyer Agreement (PBA) for the plot in question on 12.04.2018. A Maintenance Agreement was also executed between the parties on the same date. On the same day, the respondent issued a Paper Possession Letter to the complainant without obtaining an Occupancy certificate from the appropriate Authority. Copy of PBA dated 12.04.2018 is annexed as Annexure 2 and copy of maintenance agreement and possession letter are annexed as Annexure 3 and 4 respectively.
4. The respondent executed a Conveyance Deed with the complainant on 17.04.2018. However, it is pertinent to note that the respondent has not been able to produce a Part Completion Certificate or a Completion Certificate for the project in question.
5. The complainant is aggrieved by several deficiencies in services, including the issuance of Paper Possession without a Part Completion/Completion Certificate, imposition of maintenance charges despite a lack of provided services, and the charging of excessive electricity amounts.
6. It is further averred by the complainant that the developer has failed to provide legal possession of the unit and has only issued Paper Possession without the requisite Part Completion or Completion Certificate.



7. Additionally, the complainant alleges that the developer is charging excessive maintenance fees, yet has failed to provide the requisite services to the allottees. Furthermore, the respondent has failed to secure an electricity connection from the State Electricity Board, as stipulated in the Maintenance Agreement.
8. In light of the above, 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

3. The complainant in his complaint has sought following reliefs:
- (i) That the respondent be directed to pay Delay Possession Compensation to the complainant from 17.04.2018.
 - (ii) That the respondent be directed to not collect any Maintenance charges till the receipt of part completion certificate and refund the collected maintenance charges with interest.
 - (iii) That the respondent be directed to ensure individual electricity connect from UHBVN as per Builder Buyer Agreement as well as reimburse the difference of Domestic charges and the commercial charges/ rates paid by the complainant in the past and in future every month till the connection installed by UHBVN. And excess amount of electricity charges should be refund with interest.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

4. Notice of the complaint was duly served to the respondent on 01.07.2024 and successfully delivered on 02.07.2024. The first hearing was held on 20.08.2024, during which the respondent requested additional time to file a reply. Despite being granted two opportunities to do so, the respondent failed to submit the reply even in the third hearing. Consequently, a further opportunity was provided in the third hearing, subject to the imposition of a cost of Rs. 5,000 payable to the authority and Rs. 2,000 payable to the complainants. The case was subsequently scheduled for a fourth hearing on 06.03.2024, yet the respondent still failed to file a reply. In light of the respondent's repeated non-compliance despite availing numerous opportunities and keeping in consideration the summary procedure, the Authority deems it appropriate to strike off the respondent's defense and proceed to decide the present complaint ex-parte.

E. ISSUES FOR ADJUDICATION

Whether complainant is entitled to the reliefs sought or not? If yes, the quantum thereof.

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

5. In light of the facts of the case and perusal of document placed on record, Authority observes that admittedly complainant booked a plot in the project of respondent namely; 'Divine City ' Nh-1 at Ganaur,



Haryana and complainant was issued allotment letter dated 12.04.2018 whereby he was allotted plot no. 176, Block- D, ad-measuring carpet area 346.759 sq. yd. in said project. Consequently, Plot Buyer Agreement hereinafter referred as PBA was executed with respect to the said unit on 12.04.2018 itself. Till date complainant had paid an amount of ₹34,45,761/- against the total sale consideration of 34,00,000/-.

6. As per clause 16 of the agreement to sale dated 12.04.2018, the promoter shall endeavour to give allotment of the plot to the buyer as early as possible with a reasonable extension of time for possession, subject to force majeure circumstances and reasons beyond the control of the company. However, the respondent offered possession to the complainant on the same day of entering BBA ie 12.04.2018. Further, the parties executed a conveyance deed in respect of the unit in question on 17.04.2018. It is important to mention that no objection of any sort was raised by the complainant neither to the execution of Conveyance Deed nor to the possession offer letter.
7. In light of the foregoing circumstances, it is pertinent to note that on perusal of the Plot Buyer Agreement it can be averred that there is no specific clause in the agreement to govern the timeline for deemed date of possession. In the absence of a specific date in Plot buyer agreement,



it is difficult to ascertain an exact date as to when possession of the unit was due to the complainant.

In cases such as these, where there is no specific deemed date of possession, respondent cannot be allowed to evade from its liability of delivery of possession of the unit to the complainant in a time bound manner. Complainant cannot be made to wait endlessly seeking possession of the booked unit and payment of delayed possession charges in case possession has been delayed beyond a considerable time. Since delivery of possession is based on completion of entire construction and developmental works, therefore, a considerable period of time sufficient enough for completion of all such works can be held as the baseline for the purpose of calculation of deemed date of possession. In observing so, Authority places its reliance on a judgement passed by Hon'ble Apex Court in 2018 STPL 4215 SC titled as **M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr** wherein it has been observed that in absence of builder buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given, a period of 3 years has been observed as a reasonable period of time to complete construction and deliver possession of the unit.



In this case, respondent had already allotted a specific unit to the complainant on 12.04.2018. Now taking a period of 3 years from the said date as a reasonable time to complete development works in the project and handover possession to the allottee, the deemed date of possession comes to 12.04.2021.

Also, in reference to this reliance can be place upon Section 18 of RERA Act of 2016, which mentions about return of amount and compensation. Complainant herein is not entitled to delayed possession charges which is provided under the proviso to Section 18 (1) of the Act, Relevant Section is as under:

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 (emphasis applied)** at such rate as may be prescribed”.*

9. The Authority observes that, upon a bare reading of Section 18 of the Act, it is clear that an allottee is entitled to interest for every month of delay in possession until the actual possession of the property is handed over. In this case, the deemed date of possession was 12.04.2021, as per the judgment cited above. However, the respondent offered possession




of the plot to the complainants on 12.04.2018, and the complainants physically took possession on 17.04.2018, as per the conveyance deed.

Section 18 of the Act specifically applies to cases where the possession is delayed beyond the deemed date of possession, and interest is to be paid for such delay. In the present case, there is no delay. Therefore, the complainants are not entitled to claim delay possession charges.


10. In respect of the second and third reliefs sought by the respondent, which include a refund of the collected maintenance charges with interest and the refund of electricity charges, the Authority is of the view that these claims have already been addressed and dealt at length in Complaint No. 101 of 2020. In the aforementioned complaint, the complainant was part of a group of allottees, and the same issues related to maintenance and electricity charges were adjudicated as part of that complaint. "Res judicata," meaning "a matter judged," is a legal principle that prevents relitigating a case once it has been decided on its merits by a competent court, ensuring finality in litigation and preventing parties from being vexed twice for the same cause. Therefore, the Authority concludes that the reliefs related to the refund of maintenance and electricity charges cannot be granted to the complainant in this proceeding.



11. In view of aforesaid observations, present complaint stands **Disposed of.**
File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S SACHDEV
[CHAIRMAN]