



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3014 of 2019
Date of filing:	26.12.2019
First date of hearing:	20.02.2020
Date of decision:	21.05.2024

Sunil Gudwani and Manjusha Gudwani

R/o F-94, Ground Floor, Vikas Puri,
New Delhi -110018

...COMPLAINANT (S)

Versus

Omaxe Ltd.

Omaxe House, 7, Local Shopping Center,
Kalkaji, New Delhi

...RESPONDENT 1.

Shanvi Estate Management service Pvt. Ltd.

Basement 1, Omaxe square, plot no.14,
Jasola, New Delhi

...RESPONDENT 2.

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Date of Hearing: 21.05.2024

Hearing: 21st

Present: - Adv. Akshat Mittal, I.d. Counsel for Complainants
Adv. Munish Gupta, I.d. Counsel for both respondents

Geeta Rathee

ORDER

1. Present Complaint has been filed by complainants 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 allottees as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

Sr. No	Particulars	Details
1.	Name of the project	Omaxe North Avenue-2 , situated at Bahadurgarh
2.	Name of the promoter	Omaxe Ltd.
3.	RERA registered or not	Un-registered
4.	Unit No.	67
5.	Unit Area	2054 sq. ft
6.	Revised area of unit	2267 sq. ft
7.	Date of endorsement	30.05.2014



8.	Date of Builder Buyer Agreement	05.06.2010
9.	Due date of possession	30.05.2014 (as per endorsement date)
10.	Total sale price of unit	Rs. 39,02,600/-
11.	Amount paid by the complainants	Rs. 47,55,380.32/-
12.	Fit out offer of possession without occupation certificate	10.06.2016
13.	Whether occupation certificate received or not.	O.C received on 27.07.2016

B. FACTS OF THE COMPLAINT

- Case of the complainants are that original allottees i.e. Devki Nandan Sharma and Roopak Schaj Paul booked an unit no. 67, admeasuring area 2054 sq.ft. in respondent project namely "Omaxe North Avenue-2", situated at Bahadurgarh, Jhajjar. Vide request letter dated 30.05.2014, complainants i.e. Sunil Gudwani and Manjusha Gudwani purchased unit from original allottees.
- That builder buyer agreement executed between complainants and respondent no.1. on 05.06.2010. As per the clause 33(a) of the agreement for sale, the possession of the unit in question was to be handed over to the complainants within a period of 18 months from the date of execution of the agreement or within an extended period of 6 months i.e. by



04.06.2012. However, respondent had not handed over possession even after lapse of 14 years. Complainants had paid Rs. 47,55,380.32/- against total sale price of Rs. 39,02,600/-

5. That on 10.06.2016, a letter titled 'offer of possession for carrying out fitting and furnishing work' was issued to the complainants. It is submitted that the above said offer of possession for fit outs was not accompanied by any occupancy certificate or any intimation regarding the same. More so, the complainants were asked to make payment of Rs. 11,41,968.11/- which was inclusive of 'interest on account of delayed remittance', without their being the slightest whisper of the compensation/interest to be paid by the respondent to the complainants for the delay in the offer of possession. Further respondents also increased area of unit from 2054 sq. ft. to 2267 sq. ft.
6. That the complainants duly made the payment as asked for by the respondents, nevertheless, aggrieved by the above said letter dated 10.06.2016 and the mala fides on the part of the respondents, the complainants issued a letter dated 03.02.2017 to the respondent no.1, expressing displeasure and requesting for compensation qua delayed possession, but to no avail as the same was not adhered to or even replied to by the respondent no.1.
7. That agreement executed inter-se the parties, clause 33(c) stipulates the penalty on the respondents for delay in possession to the tune of Rs. 5/-



per sq. ft. per month for the super area for the period of delay. It is submitted that even the said clause, which in fact is unilateral in character in the sense of imposing the minutest penalty on the respondent company, has not been complied with by the respondents.

8. That disgustingly enough, the respondent no.1, without replying or taking into consideration the grievances of the complainants, issued another demand letter dated 19.07.2016. At this juncture the complainants were constrained to move complaint to the Consumer Online Foundation vide complaint ID 9956147, with a request to the authorities to direct the respondents to compensate the allottees for the delayed possession.
9. That complainants had raised complaint with the SHO, A Block, Police Station, Vikas Puri, New Delhi vide letter dated 27.09.2017 for compensation for delay possession.
10. That respondent no.1 issued a letter dated 23.04.2018, again without a whisper regarding compensation for delayed possession. The same was replied to by the complainants vide letter dated 27.07.2018, again requesting for redressal of the grievances and for compensation for the delay in possession, mentioning therein that on not receiving a satisfactory reply, the complainants shall be constrained to undertake legal action.




11. That when no response was received from the respondent no.1 the complainants made one last try and communication with the respondent no.1 vide letter dated 09.05.2019.
12. That, the respondents is charging maintenance charges and issuing demand letters qua the same. It is submitted herein that the said demand qua maintenance charges is totally vexatious, unwarranted and uncalled for, given the fact that firstly the lawful possession has never been issued by the respondents even to this date; Secondly, the grievances of the complainants have never been redressed despite numerous efforts by the complainants for the same, the whole account of which has already been enumerated in the preceding paragraphs of the instant complaint.
13. That complainants had issued letters dated 29.09.2019 & 04.10.2019 to the Hon'ble RERA, Panchkula, praying for indulgence of the Hon'ble Bench and for justice; which has been considered by the Hon'ble Bench and a letter dated 14.11.2019 has been received by the Hon'ble Bench advising the complainants to file the compliant on the prescribed format for redressal of the grievances. It is in furtherance of the same that the instant complaint is being preferred by the complainants herein.

C. RELIEF SOUGHT

14. a) To direct the respondents to offer immediate legal and physical possession of the unit in question to the complainants.



- b) To direct the respondents to compensate the complainants for the delay in offer of possession by paying interest @24% per annum on the entire deposited amount of Rs. 47,55,380.32/- (Rupees Forty Seven Lakh, Fifty Five Thousand, Three hundred Eighty and Thirty Two Paise only) which has been deposited against the property in question so booked by the complainants, in accordance with the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules 2017.
- c) To direct the respondents to waive of the delayed payment charges demanded from the complainants herein, for the reasons stated in the instant complaint.
- d) To direct the respondents to set aside the increase in the size of the unit effected arbitrarily, unilaterally and illegally; or to direct the respondents not to charge for the same from the complainants.
- e) To direct the respondents to set aside the charges qua maintenance etc., for the reasons mentioned in the complaint.
- f) The registration, if any, granted to the respondent for the project namely, "Omaxe North Avenue - II", situated in the Revenue Estates of Village Bahadurgarh, District Jhajjar, Haryana, under RERA read with relevant Rules may be revoked under Section 7 of the RERA for violating the provisions of The Act.



- g) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

D. REPLY ON BEHALF OF RESPONDENT No.1

15. That the completion certificate of the project in question had already been applied before coming into force of RERA Act and pursuant thereto, the Directorate of Town & Country Planning, Haryana has issued Completion Certificate to the Respondent No.1-Company on 27.07.2016 in respect of the project, in which subject property is situated. The project in question is not a RERA Registered Project, as the completion certificate was applied, much prior to coming into force of the provision of RERA Act read with Haryana RERA Rules, 2017. In fact, conveyance deed of substantial number of allottees, has been registered. The Resident Welfare Association has been formed and maintenance has been handed over to an independent maintenance agency. Therefore, the project was not required to be registered.
16. That complainants alleges that the possession was required to be handed over within period of 18 months from 05.06.2010 (date of execution of agreement). Thus, the possession was required to be handed over within 18+6 months from 30.05.2014 (date of assignment of rights in favour of complainants). It is relevant to mention here that the possession was offered to the complainants on 10.06.2016 which has also been admitted by the complainant in the complaint. Thus, the possession was offered



timely, because as per clause 33(a) of the agreement, the period of development is to be computed by excluding Sundays, Bank Holidays, enforced Govt. Holidays and the days of cessation of work. In view of the same, the complainants have tried to mislead this Hon'ble Authority by concealing true and relevant facts and by twisting real facts. It is also relevant to mention here that the letter of possession dated 10.06.2016 was also followed by reminders dated 23.04.2018. However, the complainants have not come forward for doing the needful.

17. That the complaint is also liable to be dismissed as the complainants have tried to mislead this Hon'ble Authority. The complainants have alleged that the area has been increased unilaterally and at its own by the answering respondents. It is submitted that at the time of execution of agreement dated 05.06.2010, it was agreed between the parties especially vide Clause 4 & 5 thereof that the area of the unit in question is tentative in nature and subject to change and the final size, location, number, boundaries etc. shall be confirmed on completion of the development of the project. Therefore, it cannot be said that the size of the unit has been unilaterally changed. The complainants are bound by the terms and conditions of the agreement, as he stepped into the shoes of original allottees upon assignment of allotment rights in his favour.
18. That in pursuance of clause 51 of the agreement, it has been agreed between the parties (complainants stepped into the shoes of original



allottees, upon transfer of allotment rights in his favour) that all or any disputes arising out of or touching upon or in relation to the agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Delhi/New Delhi. Thus, the instant complaint deserves to be dismissed.

19. That further this Hon'ble Authority does not have territorial jurisdiction to entertain the present complaint, as in view of clause 52 of the agreement dated 05.06.2010, only the Courts at Bahadurgarh and Delhi have the territorial jurisdiction to entertain the present complaint. Thus also, the instant complaint deserves to be dismissed.

20. That the instant complaint is barred by limitation. As per the case of the complainants himself, the alleged cause of action, arose in his favour, more than 3 years back. Thus, the instant complaint deserves to be dismissed.

E. REPLY ON BEHALF OF RESPONDENT No. 2

21. That the complainants are seeking various reliefs, which do not fall within the ambit/jurisdiction of this Hon'ble Authority and therefore, the



complaint is liable to be dismissed on this score alone. The prayers made can only be adjudicated by Adjudicating Authority and not by this Hon'ble Authority. On this ground itself, the complaint is liable to be rejected.

22. That the Respondent No.2 provides maintenance services to the allottees of the project. Its functions include upkeep of township project, operation of common services therein, supply of water and also repair of common areas etc. It is submitted that possession stands offered to the complainants on 10.06.2016 by respondent no.1. Thus, the maintenance charges have been rightly charged from the complainant and despite offer of possession having been made, if the complainants did not come forward and did not take physical possession, the same does not make him entitle not to pay maintenance charges.

**F. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANTS AND RESPONDENTS**

23. During oral arguments learned counsel for the complainants and respondents have reiterated arguments as mentioned in their written submissions.

G. ISSUE FOR ADJUDICATION

24. Whether the complainant is entitled for physical possession of plot along with an interest @18% p.a. on account of delay of physical possession of the plot in question ?



25. Whether there is any arbitrary increase in area of the unit allotted to complainants ?

H. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENTS

H.1. Objection regarding territorial jurisdiction

One of the averments of respondent is that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi. In this regard it is submitted that as per notification no. 1/92/2017/TTC dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose. In the present case the project in question is situated within the planning area Bahadurgarh, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

H.2. Objections raised by the respondent no.1 stating that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015)

With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an



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

H.3. Objection raised by respondents that the present complaint is barred by limitation

Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that the



Limitation Act applies only to courts and not to the tribunals.

Relevant para is reproduced herein:

" 19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Indian Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

H.4. Objection raised by respondents that project is not registered therefore provision of RERA Act not apply on respondents

Authority observes that the respondent no.1 has taken a stand that present complaint is not maintainable for the reason that it pertains to an unregistered project of the respondent, and the reliefs sought does not fall within the jurisdiction of this Hon'ble Authority. In this regard it is observed that there is nothing on record to prove that respondent no1. has obtained the completion certificate on the date of the commencement of the RERA Act, 2016, therefore on the commencement of RERA Act, 2016



project in question was within the ambit of the definition of ongoing project. Further, as per proviso to Section 3(1) of the RERA Act, 2016 only those project shall be excluded from ongoing project in which completion certificate is received prior to commencement of RERA Act, 2016. In present complaint respondent had not received completion certificate before commencement of RERA Act, 2016. Therefore, project is in ambit of ongoing project and registrable. Furthermore, issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

"14. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondents is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottees by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable."

Also, Section 11(4) of the RERA Act, 2016 that provides for obligation of the promoter does not distinguish between registered and unregistered project. Therefore, provision of Rera act, 2016 will apply to respondents.



H.5. Objection raised by respondent no. 2 that prayers made by complainants can only be adjudicated by adjudicating officer and not by this Hon'ble Authority

Respondent no. 2 has objected that the present complaint can only be adjudicated by adjudicating officer and not by Hon'ble Authority. In this regard Authority observed that complainants are aggrieved by the fact that the promoter has violated section 11(4) (a) as respondents has failed to handover the possession of the unit within stipulated time. Complainants in the present complaint are seeking relief of possession alongwith interest on account of delay in handing over the possession. Reference has been made to the judgement of Hon'ble Supreme Court dated 12.11.2021 in SLP Civil Appeal No. 6745-6749 titled as M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. wherein it has been held that

"82...If there is any breach or violation of the provisions of Sections 12, 14, 18 and 19 of the Act by the promoter, such a complaint straightaway has to be filed before the regulatory authority."

In view of the ratio of law laid down by the Hon'ble Apex Court Authority observes that the complaint for interest on account of delay in handing over possession shall lie before this Authority.



I. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

26. That original allottees i.e. Devki Nandan Sharma and Roopak Sehaj Paul booked a unit no. 67, admeasuring area 2054 sq. ft., in respondent project namely Omaxe North Avenue-2, situated at Bahadurgarh, Jhajjar. Vide request letter dated 30.05.2014, complainants i.e. Sunil Gudwani and Manjusha Gudwani purchased unit from original allottees. Builder buyer agreement executed between complainants and respondent no.1 on 05.06.2010. Complainants had paid a total amount of Rs. 47,55,380.32/- against the total sale consideration of Rs. 39.02,600/-.

27. As per clause 33(a) of agreement to sell possession of the unit was to handed over to the allottees within 18 months from date of execution of agreement. i.e. by 04.12.2011, however, complainants stepped into the shoes of original allottees 30.05.2014 by i.e. after lapse of deemed date and before RERA Act, 2016 coming into force. Therefore, now the question arises as to what would be the deemed date of possession in case of subsequent allottees.

In this regard Authority relies upon judgment of **Laureate Buildwell Pvt. Ltd. V/s Charanjeet Singh SC 2021** whereby it is held that: -



"31. ...The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any – even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it."

Complainants stepped into the shoes of the original allottees on 30.04.2014, i.e. after deemed date of possession and before enforcement of RERA Act of 2016. Hence they become entitled of possession with effect from 30.04.2014. However, it is matter of record that fit out possession was offered on 10.06.2016 was without occupation certificate. It is also admitted fact that respondent no.1 received occupation certificate on from DTCP on 27.07.2016. After issuance of occupation certificate respondent never offered a legally valid offer of possession. Since, no offer of possession was made to complainants after

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receiving of occupation certificate, respondents have failed to fulfil their obligation as provided in the agreement for sale and it is clear violation of section 11(4)(a) of the RERA Act, 2016. Furthermore, respondent no.1 has failed to provide for a specific timeline to handover the possession of the plot. In such circumstances, as per Section 18(1) of RERA Act, allottees may either choose to withdraw from the project and demand refund of the amount paid or may continue with the project and seek interest on account of delay in handing over possession. In the present case complainants wish to continue with the project, therefore is entitled to interest on account of delay in handing over possession. Authority hereby concludes that the complainants is entitled for the delay interest from the deemed date i.e. 30.05.2016 till the date on which a legally valid offer of possession is made to complainant after obtaining part completion certificate. 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;

Rule 15 of IIRIRA 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"

28. 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 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85 %.

29. Authority has got calculated the interest on total paid amount from date of endorsement i.e., 30.05.2014, till the date of order, which works out to Rs. **48,69,316/-** as per detail given in the table below:

Sr.no	Principal amount	Deemed date of possession or date of payment whichever is later	Interest accrued till 21.05.2024
1.	347503.15	30.05.2014	376524
2.	345425.73	30.05.2014	374274
3.	814921.14	30.05.2014	882978
4.	400416	30.05.2014	433856

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5.	129535.47	12.09.2016	108163
6.	290000	30.05.2014	314219
7.	254320	30.05.2014	275559
8.	60480	30.05.2014	65531
9.	492	30.05.2014	533
10.	507268.43	30.05.2014	549632
11.	57700	30.05.2014	62519
12.	33008	30.05.2014	35765
13.	954696.67	12.06.2016	797176
Total	Rs. 47,55,380.32/-		Rs. 48,69,316/-
Monthly interest commencing w.e.f. 21.05.2024 =Rs. 42408/-			

30. Further, complainants have alleged that the respondents have arbitrarily increased the area of the unit from 2054 sq. ft. to 2267 sq. ft. and prays for directions to respondents to not charge for such increased area. In this regard Authority observes that as per clause 5 of builder buyer agreement dated 05.06.2010, area of unit was tentative and it can be increased or decreased "as per direction of sanction Authority, Architect or structural engineers." However, there is nothing on record produced by the respondent which shows there is increase in area/ FAR by a competent Authority. Therefore, in absence of any such approval by a

[Signature]

competent Authority complainants cannot be burdened with liability to pay for an area beyond what has been agreed in the agreement for sale.

31. Furthermore, complainants are also aggrieved by the fact that respondents has arbitrarily levied interest on them for delay in making payments and also seeking relief to waive of delayed payment charges. In this regard it is observed that no document has been place on record by the complainants to prove that complainants made all payments on time. The fact that there was demand raised by respondents and complainants paid the same on time. The only document relied upon by complainants with regard to delay interest is statement of account dated 10.06.2016, where there is a mention of an amount of Rs. 2,357/- on account of delay remittance. Thus, it is not proved that there is no delay in payment by complainants. Therefore, this relief of waiver of delayed payment charges is not allowed.

32. Complainants at relief clause (c), are also seeking relief to set aside maintenance charges. In this regard it is observed that after receiving occupation certificate respondent had not made any offer of possession to complainants till date. Authority is not hesitant to state that since till date no valid offer of possession has been made to the complainants, they cannot be burdened to pay maintenance charges. The obligation to pay such maintenance charges shall occur only once a legally offer of possession is made by respondent.



33. As for clause (f), it is not a part for pleadings and also it is not argued in hearings. Therefore, this relief is not allowed.

J. DIRECTIONS OF THE AUTHORITY


34. 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) Respondents are directed to pay upfront delay interest of Rs 48,69,316/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest of Rs. 42,408/- shall be payable by the respondents to the complainants up to the date of legally valid offer of possession.
- (ii) Further, the complainants are directed to pay any outstanding dues, if found payable, along with interest at the same rate of 10.85%, which is the rate at which the respondents are liable to pay interest to the complainants for any delay in handing over possession.
- (iii) Respondent are directed to claim maintenance charges only after making valid offer of possession to complainants.



(iv) A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

35. Captioned complaint is accordingly **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]