



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	217 of 2024
Date of filing.:	23.02.2024
First date of hearing.:	28.05.2024
Date of decision.:	29.07.2025

Mridu Mehta, W/o Sh. Madan Mohan Mehta,  
R/o House no. 12, New Shankar Garden Colony,  
Gujja Peer road, Jalandhar,  
Punjab-144004

....COMPLAINANT

VERSUS

M/s Konark Rajhans Estates Pvt. Ltd.,  
through its Director  
Regd. Office: Village Kot, Sector-14, Panchkula  
Extension-II, District Panchkula, Haryana.

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Chander Shekhar**

**Member**  
**Member**

**Present:**

Mr. Arjun Kundra, Learned Counsel for the complainant  
through VC  
Mr. Vineet Schgal, Learned Counsel for the respondents  
through VC

**ORDER(DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint was filed on 23.02.2024 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**

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

S.No.	Particulars	Details
1.	Name of the project.	Asha Panchkula, Sector-14, Panchkula Extention II, village Kot.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Registered Reg. no.- 173 of 2017 dated 29.08.2017
4.	Details of the unit.	B-0803, 8 <sup>th</sup> floor



5.	Date of booking	25.03.2016
6.	Date of allotment	27.05.2016
7.	Date of Flat/ Apartment Buyer Agreement	08.08.2016
8.	Possession clause as per agreement (Clause 9)	As per clause 9, the company contemplates to offer possession of the said apartment to the allottee within a period of 36 months from the receipt of the first instalment against allotment of the said apartment with a grace period of 6 months, subject to Force Majeure circumstances and due to failure of the allottee to pay in time the total sale price and other charges and dues.  Note:- The first instalment was made on 24.06.2016 as per receipt attached with the complaint.
7.	Due date of possession	24.12.2019
8.	Total sale consideration	₹24,69,800 /-
9.	Amount paid by complainant	₹23,36,963/-
10.	Offer of possession.	None

### B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. The complainants made a booking application on 25.03.2016 and upon the payment of booking amount they were issued an allotment letter dated





27.05.2016. Vide this allotment, respondent confirmed the allotment of a 2 BHK apartment (corner unit or park facing) bearing flat no. B-0803 on the 8<sup>th</sup> floor. Thereafter, apartment buyer agreement was executed between the parties on 08.08.2016 between the complainants and the respondent. The basic sale price of the flat was fixed as ₹ 17,93,310/- and the total sale consideration was fixed as ₹24,69,800 /- including additional charges towards EDC, IDC and IFMS, Club membership charges and power backup charges.

4. As per clause 9 of apartment buyer agreement, possession was to be delivered within a period of 36 months from the date of receipt of first installment against allotment of the said apartment plus a grace period of 6 months from the date of the agreement, unless there is a delay or failure due to force majeure conditions and due to failure of apartment allottee(s) to pay in time the total sale price and other charges and dues as mentioned in the agreement or any failure by allottee(s) to abide by all or any of the terms and conditions of the agreement. First installment was made on 24.06.2016, therefore, possession has been due since 24.06.2019 but the respondent has failed to deliver possession in time.
5. That till date, the complainant has made timely payments of instalments to the tune of ₹. 23,36,963/- to the respondent company. It is submitted that the complainant had made all the payments on time, the respondent, however, has miserably delayed the construction and development of the project. The complainant had already made payment of the majority of the sale



consideration and had no other option but to wait for the possession of the booked unit. The possession has been due since June 2019 but till date the same has not been delivered and there is no sign of completion of the same in near future. The complainant has further alleged that the terms of apartment buyer agreement were arbitrary and consisting of unilateral terms.

6. The respondent has never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondent and has led to the delay in the completion and development of the project within the time prescribed in the agreement. Delay in construction of the project is solely due to the deliberate negligence and deficiency on the part of the respondent.
7. Therefore, complainant has filed the present complaint seeking possession of the booked apartment along-with delay interest for the delay caused in delivery of possession as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016.

**C. RELIEF SOUGHT:**

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-

a) Direct the respondent to deliver immediate possession of the unit bearing no. B-0803, Floor-8, "Asha Panchkula", Kot Village, Panchkula Extension-2, Sector-14, Panchkula, Haryana admeasuring 1110.00 sq ft.



after due completion and receipt of occupancy/completion certificate along with all the promised amenities and facilities and to the satisfaction of the complainant after removal of any deficiencies and defects; and

b) Direct the respondent to pay prescribed rate of interest as per the Act, on the amount already paid by the complainant from the promised date of delivery i.e., 24.06.2019 till the actual physical and legal delivery of possession after receipt of the Occupancy Certificate and Completion certificate; and

c) In the alternate, direct the respondent to pay an agreed rate of interest i.e., 12% p.a. on the amount already paid by the complainant from the promised date of delivery i.e., 24.06.2019 till the actual physical and legal delivery of possession after receipt of the Occupancy Certificate and Completion certificate; and

d) Pass an order restraining the respondent from charging any amount from the complainant which do not form part of the apartment buyer agreement dated 08.08.2016 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges etc. whatsoever; and/or to direct the respondent to refund/adjust any such charges which they have already received from the complainant;

e) May pass any other orders/order which the Hon'ble Authority deems fit as per the facts and circumstances of the matter.



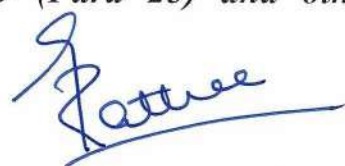


9. During the course of arguments, learned counsel for the complainant reiterated the facts as mentioned above. He further submitted that the present matter is fully covered by judgement passed by this Hon'ble Authority in complaint no.2342 of 2023; therefore this case may be decided on those terms itself.

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

10. Respondent submits that they are ready to settle the issue raised by the complainant amicably through mutual discussion failing which proper proceedings under Arbitration & Conciliation Act could be carried out as per agreed terms and conditions by the parties in clause 33 of builder buyer agreement. Authority does not have the jurisdiction to entertain the purported consumer complaint as it has been specifically stated/mentioned in the said agreement that all the disputes shall be referred to an arbitrator to be appointed as per provisions of Arbitration and Conciliation Act, 1996 (as amended).

11. That the present complaint filed by the complainant is liable to be dismissed as the delay in offering possession of the said unit to the complainant was due to force majeure events and not due to willful negligence of the respondent. A series of force majeure events which took place during the period of development of the said project. It is further submitted that as per mandate of Constitution Bench of the Hon'ble Supreme Court in the case of *Chand Rani Vs. Kamal Rani 1993-1-SCC-519 (Para 25) and other*



*decisions namely, Gomathinayagam Pillai Vs. Palaniswami Nadar 1967-1-SCR-227 and Govind Prasad Chaturvedi v. Hari Dutt Shastri 1977-2-SCC-539 (Para 5), it is held that fixation of period within which contract has to be performed does not make the stipulation as to time, the essence of the contract and when a contract relates to a sale of immovable property, it will normally be presumed that time is not the essence of the contract.*

12. That clause 9 of the apartment buyer agreement executed between the parties provides that the "estimated time of delivery" was subject to the other terms and conditions of the said agreement. Clause 9 of the said agreement is being reproduced hereunder:

*"The company based on the present plans and estimates contemplates to offer possession of the said Apartment to Allottee within a period of 36 months from the receipt of first instalment against allotment of the said Apartment plus a grace period of 6 months, unless there shall be delay or failure due to Force Majeure Conditions and due to failure of Apartment Allottee(s) to pay in time the total sale price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Apartment Allottee(s) to abide by the terms and conditions of this Agreement."*

Thus, delay in offering possession of the said unit to complainant was due to force majeure events and not due to willful negligence of the respondent. Respondent submits that it had never guaranteed or assured that the possession will be offered within 36+6 months rather it merely contemplated about estimated time of possession. It is submitted that in real estate sector, there are various factors that affect the regular development of





projects and as such no guarantee can be given to the allottees regarding offer of possession of the project. It is always subject to other terms and conditions as agreed upon in said agreement.

13. Respondent submits that a series of force majeure events took place during the period of development of the said project which are stated in detail hereunder:

- i. In the month of February, 2018, the respondent company had executed a purchase order to buy 216 metric tons of TMT Steel from M/s Fortune Metals Ltd. for the purpose of construction in the said project and gave two cheques towards advance payment. However, M/s Fortune Metals Ltd. only delivered 72.28 metric tons of steel and did not fulfil the remaining order,. Aggrieved by the same, respondent tried to contact the said supplier but neither the said order was completed, nor the money of respondent was refunded by the said supplier. Finding no alternative, the respondent approached the Hon'ble Delhi High Court vide Art. Pet. 147/2019 for appointment of an Arbitrator and vide order dated 05.04.2019, the Hon'ble Delhi High Court appointed a sole arbitrator for the purpose of adjudicating the claim of the respondent. During the arbitration proceedings, the respondent substantiated its claim with all the necessary proofs and ultimately on 14.01.2020, an Arbitration Award was passed in favor of the respondent by the I.d. Arbitrator and the said supplier was directed to return the amount of the respondent along-with



12% interest. Due to the said non-supply of raw material and illegal forfeiture of respondent's money, the development at the said project was severely hampered and thus, the respondent despite its best efforts and reasonable diligence, could not complete the construction of the project within the estimated time and as such the same amounts to force majeure.

- ii. It is further submitted that the contract for the civil and structural work of the said project was given to M/s Bucon Infratech Pvt. Ltd. in the year 2016 for a total contract value of Rs.44.29,12.101/-. The work was to be completed within a period of 27 months, however, in the year 2018, dispute arose between the respondent company and the contractor over illegal demands being raised by the latter. Unfortunately, the construction work at the said project came to a complete halt due to which the respondent faced huge losses. Finding no alternative, the respondent had to engage another contractor to get the construction work of the said project completed. Thereafter, the said Contractor filed a Mediation Petition No. 284/2020 before the Hon'ble Delhi High Court but the said mediation failed as the respondent did not again agree to the illegal demands of the said contractor. Later, the said contractor filed a Civil Suit (Commercial) bearing CS No. 147/2022 before the Hon'ble Delhi High Court for the recovery of his alleged outstanding amount. On 13.10.2022, a consent decree was passed in the said case by the



Hon'ble Delhi High Court on account of settlement between the parties. Due to the said non completion of construction work by the main contractor of the said project, the development of the project got delayed and the respondent had to suffer huge losses. The said delay was beyond the control of the company and as such, amounts to force majeure.

- iii. Thereafter in the month of March, 2020, the whole country faced massive backlash due to Covid-19 pandemic when nationwide 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. iv. Further in the month of May, 2020, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of 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, Panchkula granted general extension for all the 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.

14. That the respondent is not in a position to give immediate possession of the said apartment to the complainant or per month interest till delivery of possession as it would stall the whole project and would hamper the interests of rest of the allottees. The said project of the respondent was





highly undersubscribed due to which the respondent could not arrange adequate funds. As on 31.10.2023, out of the total saleable units i.e., 452 units (residential & commercial both), the respondent could sell only 159 units which is not even 50% of the total inventory. If in such circumstances, the respondent is directed to pay per month delay interest to the complainant till offering possession of the unit, the respondent would not be able to even complete the construction of the said project.

15. Further, construction work at the project is going on in full swing and in the most effective and efficient manner and respondent is ready to deliver the possession of the said project to its allottees as soon as the development work is completed. The respondent has been regularly sending the updates of the project to its allottees via email and has never backed out from its responsibilities of letting the allottees know the actual position of the said project.

16. The respondent company contemplated to offer possession of the said apartment within a period of thirty six plus six (36+6) months from the date of receipt of first installment, hence, the respondent never guaranteed or assured that the possession will be offered within said period rather the respondent merely contemplated about the estimated time of possession. In real estate sector, there are various factors that affect the regular development of projects and as such no guarantee can be given to the allottees regarding the offer of possession of the project. It is further



submitted that the said period of delivery of possession was subject to the other terms and conditions agreed upon in the said Agreement. It was clearly mentioned in the said agreement that the possession would be subject to force majeure conditions and the said project of the respondent has been heavily affected and delayed due to force majeure circumstances that were totally unforeseen and beyond the control of respondent.

17. Complainant had never made any objection to any of the clauses of the agreement and it is clear from the fact that the complainant has not placed on record the proof of any communication made to the representatives of the respondent company regarding the alleged unilateral terms in the said agreement.

18. Complainant defaulted in making payments on various occasions the respondent company had levied interest upon the late payments by the complainant and the complainant has paid the said interest. If there was no delay on the part of the complainant in making payments, then the complainant would have never paid delay interest upon the same.

19. During hearing, ld. counsel for respondent reiterated the submissions already pleaded in the reply filed by the respondent. Same are hence not reproduced for brevity.



**F. ISSUE FOR ADJUDICATION:**

20. Whether the complainant is entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

**G. FINDINGS ON OBJECTION RAISED BY THE RESPONDENT**

**G.1 Objection raised by respondent that complainant is in breach of Agreement (ABA) for non-invocation of arbitration.**

The objection that has been taken by the respondent is that there exists an arbitration clause in the agreement and the complainant must invoke for arbitration proceedings in the present case before coming before the Authority. In this regard, Authority observes that that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the RERA Act bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section-88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the





Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.*, *Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or*



*the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*

*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."*

Further, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629- 30/2018 in civil appeal no. 23512-23513 of 2017* decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special*





*remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength of an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider; the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

Furthermore, Delhi High Court in 2022 in ***Priyanka Taksh Sood V. Sunworld Residency, 2022 SCC OnLine Del 4717*** examined provisions that are "Pari Materia" to Section 89 of RERA Act; e.g. Section 60 of Competition act, Section 81 of IT Act, IBC, etc. It held "there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act." Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of





flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

#### **H. OBSERVATIONS OF THE AUTHORITY**


21. As per facts and circumstances, complainant had booked an apartment in the project of the respondent namely 'Asha Panchkula' situated at Sector-14, Panchkula Extension II, village Kot. Vide allotment letter dated 27.05.2016, complainant was allotted apartment bearing no. B-0803 on the 8<sup>th</sup> floor in the said project. The total sale consideration of the apartment was fixed at ₹ 24,69,800/- against which the complainant had made a total payment of ₹ 23,36,963/-. An apartment buyer's agreement was executed between the parties on 08.08.2016. As per said agreement possession of the apartment was to be delivered within a period of 36 months from the date of receipt of



first instalment against allotment of the said apartment plus grace period of 6 months from the date of the agreement. As per record, the first payment of instalment was made by the complainant on 24.06.2016 under the head-"within 30 days of allotment". Thus taking a period of 36 months plus 6 months grace period from the said date, the respondent was liable to deliver possession of the booked apartment by 24.12.2019.

22.It is a matter of fact that the respondent failed to deliver possession of the booked apartment to the complainant within the time period stipulated in the agreement. Respondent has attributed this delay to various force majeure circumstances such as unavailability of raw material amid pending dispute with the supplier; deficiency in services for the civil and structural work outsourced to an independent contractor and outbreak of Covid-19 pandemic.

The RERA Act, specifically Section 6, acknowledges force majeure events as circumstances beyond the control of the promoter that prevent project completion. As per Act, the expression "force majeure" means a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project (U/Section 6 of RERA Act 2016). General commercial difficulties such as financial constraints, shortage of raw materials, or workforce unavailability do not qualify for relief under this clause, since they are seen as occupational risks



on the part of the promoter. While *force majeure* is a legitimate defense, its misuse is a frequent point of litigation. Builders often attempt to classify generic commercial difficulties under this clause. The term "Force Majeure" is based on the concept of the doctrine of frustration under the Indian Contract Act, 1872: particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible or has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of **Alopi Parshad and Sons Ltd vs Union of India, AIR 1960 SC 588** and the landmark **Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) - 2017 3 AWC 2692 SC**, the Supreme Court of India has categorically stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.

23. In the present complaint, respondent has cited non-availability of raw material (TMT Steel) and deficiency in service on the part of outsourced contractor as reasons for delay. Reasons such as dispute between





respondent and its contractor/ suppliers are normal commercial difficulties being faced by promoters engaged in the business of real estate development. Such incidents are occupational risks which the promoter/developer is aware of at the time of launch of a real estate project. These instances do not present as a situation which is beyond the control of the respondent/promoter. Any dispute inter-se the respondent and third party shall not per-se push the timeline for delivery of project as agreed between complainant and respondent vide apartment buyer agreement dated 08.08.2016.

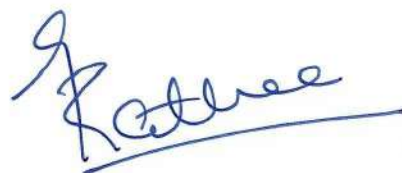
24. Further, another defence adopted by respondent is that the possession got delayed due to outbreak of Covid 19 pandemic. In this regard it is observed that due date of possession was 24.12.2019, whereas Covid-19 pandemic hit construction activities post 22.03.2020, therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. vs Vedanta Lid & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020** has observed that:

*"69... The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same*



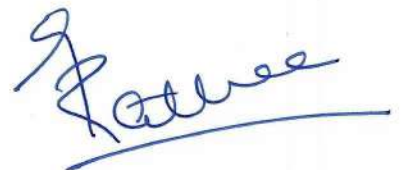
*repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself."*

25. The respondent has further claimed that HRERA, Panchkula had granted general extension of registration to respondent's project due to covid 19 in 2020 for 6 months w.c.f. March, 2020 and in 2021 for a period of 3 months due to the second wave of Covid 19 pandemic. In this regard, Authority observes that respondent/ promoter at the time of seeking grant of registration of real estate project had voluntarily declared a date for completion of the project under Section 4(2)(1)(C) and such voluntary declaration has no bearing on the date agreed between the parties for handing over of possession as the complainant is a complete stranger to such declaration made before the Authority. Therefore, any extension of the date as declared under Section 4(2)(1)(C) shall not alter, modify or extend the date committed by respondent / promoter in the agreement for sale between complainant and respondent. Further Section 11(4) (a) of the RERA Act, 2016 clearly provides that the promoter shall be responsible for all obligations and responsibilities and function as per agreement for sale. Thus, as per contract/ agreement executed with the complainant, respondent was duty bound to offer possession within the time stipulated in said agreement and it cannot shed its responsibility on pretext of extension granted on other grounds by the Authority.



26. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 24.12.2019. However, respondent failed to complete construction of the project and deliver possession within stipulated time. Now, even after a lapse of more than 5 years, respondent is not in a position to offer possession of the unit since respondent company is yet to receive occupation certificate in respect of the unit. Further, the respondent in its submissions written/oral has filed to provide a clear timeline as to when the possession of the booked apartment will be offered to the complainant.

The complainant in the captioned complaint does not wish to withdraw from the project and is ready to wait for delivery of possession of the apartment in question after receipt of occupation certificate. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked apartment, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant. So, the Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 24.12.2019 till a valid offer of possession is issued to the complainant. As per Section 18 of the RERA Act, interest





shall be awarded at such rate as may be prescribed. 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.*

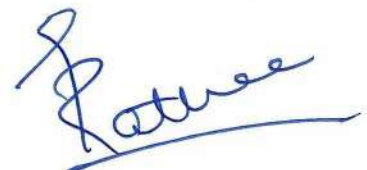
*Explanation.-For the purpose of this clause-*

*(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 HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

***"Rule 15: "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 (NCLR) 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. 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. 29.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.90%.
28. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.90% (8.90% + 2.00%) from the due date of possession i.e. 24.12.2019 till the date of a valid offer of possession.
29. Authority has got calculated the interest on total paid amount from due date of possession i.e. 24.12.2019 till the date of this order i.e. 29.07.2025 which works out to ₹ 13,99,557 /- and further monthly interest of ₹20,937 /- as per detail given in the table below:




Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 29.07.2025 (in ₹)
1.	21,85,821/-	24.12.2019	13,34,878/-
2.	1,51,142/-	27.08.2021	64,678/-
<b>Total:</b>	23,36,963/-		13,99,557/-
<b>Monthly Interest:</b>	23,36,963/-		20,937/-

#### I. DIRECTIONS OF THE AUTHORITY

30. Hence, 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:


- Respondent is directed to pay upfront delay interest of ₹13,99,557/- (till date of order i.e. 29.07.2025) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 20,937/- till the offer of possession after receipt of occupation certificate.
- Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession






- iii. The respondent shall not charge anything from the complainants which is not part of the agreement to sell.

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

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]