



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	425 of 2024
Date of filing:	12.04.2024
First date of hearing:	27.05.2024
Date of decision:	07.04.2025

Prateek Sharma,
2170, Gali Hanuman Prasad,
Masjid Khanjoor, Chandani Chowk,
Delhi-110006.

.....COMPLAINANT

Versus

1. Parker VRC Infrastructure Pvt. Ltd.

Regd. Address: 410, 4th floor, D Mall,
Netaji Subhash Place, Pitampura, New Delhi-110034.

2. Aakarshak Realtors Pvt. Ltd.

Regd. Address: 1332, D Sultan Singh Building,
Behind Bata Showroom, Kashmere Gate,
North west, Delhi-110006.

3. Javier Management Services Pvt. Ltd.

Regd. Address: 1332, D Sultan Singh Building,
Behind Bata Showroom, Kashmere Gate,
North west, Delhi-110006.

.....RESPONDENTS

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Adv. Niwas Kumar, Counsel for the complainant through VC.
Adv. Gaurav Gupta, Counsel for the respondent no.1 and 2
through VC.
None present for respondent no.3

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 12.04.2024 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA 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 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
1.	Name of the project	White Lily, Sector-8, Sonipat
2.	Name of the promoter	M/s Parker VRC Infrastructure Pvt. Ltd.
3.	Unit No. allotted	C-504, 5 th floor, Tower C
4.	Unit area	1725 sq.ft
5.	Date of allotment	07.01.2014
6.	Date of Builder Buyer Agreement	07.01.2014
7.	Due date of offer of possession	07.01.2018
8.	Possession clause in BBA	<i>The Builder based on its present plans and estimates and subject to all exceptions, expect to complete construction of the said project and offer to make possession of the said Flat(s) to the Buyer within period of 42 months from the date of signing of this agreement with grace period of 6(six) months subject to delays due to non-availability of construction materials and labours, delay in payment of instalments by the Buyers of other flats....."</i>
9.	Total sale consideration	₹33,46,500/- (as per allegation of complainant)
10.	Amount paid by complainant	₹36,86,600/-
11.	Occupation certificate	07.03.2019



12.	Offer of possession	Given on 15.04.2019
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B. FACTS OF THE COMPLAINT

- (i) Case of the complainant is that complainant booked a flat in the project namely; "White Lily" launched by the respondents vide application dated 19.01.2013 by paying an amount of Rs.2,50,000/- on 19.01.2013 as booking amount. Copy of Application Form is annexed here in as Annexure-A1.
- (ii) Thereafter, a unit no. C-504, allotted in favour of complainant vide allotment letter dated 07.01.2014 and Builder-Buyer Agreement was executed on the same day, i.e, on 07.01.2014 in which it is clearly mentioned that the total consideration for the unit in question is ₹33,46,500/-. It was specifically agreed between the parties that the aforementioned sale consideration is inclusive of all charges and no other hidden charges exist in the present transactions and no further demands other than the sale consideration as mentioned in BBA will be charged by the respondents. Copy of the Builder Buyer Agreement is annexed as Annexure-A2.
- (iii) That complainant on multiple occasions, shared his grievances relating to the completion of the project and the possession of the same. However, the respondents hopelessly and miserably failed to address the concerns and grievances of the complainant. Respondents



continued to raise demands of money and compelled the complainant along with other homebuyers to make payment in lieu of the sale consideration or else the allotment of the unit will be cancelled and total money paid will be confiscated.

- (iv) That the complainant submits that the respondents failed to provide the possession of the unit in question within stipulated time period but went to an extent of escalating the consideration value and raised illegal demands without any justification or reasons whatsoever.
- (v) That despite of the fact that the total consideration as per the BBA executed between both the parties was only ₹33,46,500/-, but the complainant has paid an amount of ₹36,86,600/- to the respondents. Even then a sum of ₹24,11,415/- is demanded by the respondents vide demand letter dated 20.06.2023 of the said unit. However, no information regarding the same has been furnished by the respondents despite of the fact that the complainant repeatedly asked the respondent to furnish the details of the same. Copy of Payments Receipts are annexed as Annexure-A3 and Copy of Demand Letter dated 20.06.2023 is annexed as Annexure-A4.
- (vi) That respondents are also demanding more than ₹2,00,000/- as maintenance charge of the said unit despite the facts that the complainant till date has not even got possession of the unit. On the



contrary complainant has already paid more than 100% payment against the total sale consideration of the unit.

- (vii) That the complainant on numerous times has asked the respondents for the possession. Every time the respondents came up with the same illegal demand, though, it is the respondents who could not give the possession of the said unit to complainant within the stipulated time.
- (viii) That the complainant personally visited the site and inspected the unit in question in July 2023. During site visit he found that the said unit was not complete. The electric wiring, plumbing work and bathrooms of the said unit were not complete. Copy of the Photograph of the said unit as on July, 2023 are annexed as Annexure-A5.
- (ix) That complainant on 23 September, 2023 sent a legal notice to respondent against the illegal demands raised by the respondent and for the completion of the said unit. Copy of the Legal Notice sent by Complainant to Respondent is annexed as Annexure-A6.
- (x) That the complainant through numerous emails asked the respondent to provide the possession. However, despite several emails the respondents put a deaf ear against all the concern and issues of the complainant. They would only ask to pay the illegal amount raised by respondents. Trail copy of the emails is annexed as Annexure- A7.
- (xi) That the complainant is aggrieved by the series of acts and conduct of the respondents which has caused him serious irreparable monetary



losses which cannot be compensated in any manner whatsoever and having no options left, the complainant is seeking shelter of this Hon'ble Authority against the illegal demands and unlawful activities of the respondents.

(xii) Rejoinder dated 01.10.2024 submitted by the complainant has the same pleadings as the pleadings mentioned in the complaint.

C. RELIEFS SOUGHT

3. Complainant has sought following reliefs :

- (i) Pass an order directing the respondent to give the possession of the unit and delay interest at the rate of MCLR+2%.
- (ii) Quash the illegal demand letter dated 20.06.2023 issued by the respondent.
- (iii) In exercise of power under sec 35 RERA,2016, direct the respondent Promoter to place on record all statutory approvals and sanctions of the Project.
- (iv) Pass any order which this Hon'ble Authority may think fit in light of facts and circumstances of the present case.

D. REPLY ON BEHALF OF RESPONDENT No.1 AND 2

4. Submissions made by the respondents no.1 and 2 in reply dated 02.05.2024 are as under:



- (i) That respondent No.2 company is now known as M/s Parker Infrastructure Pvt. Ltd with effect from 25/05/2023. The Incorporation Certificate of Respondent No.1 company is attached as Annexure-R2.
- (ii) That the complainant has not approached this Hon'ble Authority with clean hands and has concealed material facts and is not entitled to seek any relief from this Hon'ble Authority.
- (iii) That the complainant has booked a 3BHK unit in the project "White Lily" of the answering respondents by paying an amount of ₹2,50,000/- vide cheque no. 009942 dated 19/01/2013 drawn on ICICI Bank. The Builder buyer Agreement of the unit and allotment of unit no. C-504, 5th Floor was executed and issued in favour of the complainant on 07/01/2014.
- (iv) In the said BBA, it was made clear to the complainant that basic sales price of the unit is an amount of ₹25,87,500/- + service tax, amount under the head of PLC is ₹2,58,750/- + service tax, amount under the head of EDC/IDC is ₹5,00,250/-. Payments were required to be made under the heads of VAT, work contract tax, surcharge, service tax, labour cess, education cess or any other tax (clause 1.3); payment of allied charges towards cost of installation of electrical connection charges, lifts, elevators, electrical installations and fittings, fire fighting equipments, sanitary and water fittings and other equipments, (clause 1.5); payment towards stamp duty, legal and registration



charges for the execution of sale deed (clause 1.6); payment of power back up charges (clause 4); payment of sinking fund, towards DG sets, electric substations etc. (clause 12); payment of interest free maintenance security (IFMS) (clause 11). The club membership, car parking and power back up charges up to 3KVA were given complimentary to complainant.

- (v) A booking discount of ₹16,57,725/- and broker discount of ₹3,69,150/- was also given to the complainant. Construction linked payment plan was opted by the complainant. The total sale consideration of the unit was an amount of ₹37,74,473/-, i.e., an amount of ₹34,67,250/- was payable towards the sale consideration of the unit and an amount of ₹3,07,223/- was payable towards the taxes of the said unit.
- (vi) The possession of the unit was to be handed over within a period of 48 months from the date of signing of agreement subject to force majeure circumstances.
- (vii) The complainant was required to take possession of the unit within a period of 30 days from the date of intimation to take possession (clause 6(ii)). In case of failure to take possession, the complainant becomes liable to pay holding charges @ ₹10/- per sq. ft. of super area per month for entire period of delay with overdue interest @24% p.a. (clause 6(iii)). Complainant specifically agreed to make payments as



per schedule of payment. In case of failure to make timely payments, the complainant was liable to pay interest @ 24% p.a. to the answering respondents for delayed payments (clause 7(iii)).

(viii) That as per the terms of the BBA, the complainant in clause 10 also agreed that the answering respondents in its sole discretion may nominate a maintenance agency for the maintenance of the project, which charges shall be payable by the complainant. The complainant was under an obligation to execute maintenance agreement.

(ix) The complainant in clause 9 has also been informed and agreed that failure to execute maintenance agreement and/or to pay on or before its due date the maintenance charges etc. shall be termed as an event of default on the part of complainant. It was further agreed that decision of builder in this regard shall be final and binding on the buyer.

(x) That the answering respondents never delayed the construction work at the project, rather obtained financial help from the financial institutions at times when allottees like complainant were not making timely payments. The complainant's response to the demands raised by answering respondents was very poor despite the fact that construction linked payment plan was opted by complainant and demands raised by the answering respondents were in consonance with the construction at the project.



- (xi) Respondents completed the project well within time, applied for issuance of Occupancy Certificate on 07/03/2018 and obtained the same from the Competent Authority vide Memo No. ZP-516/AD(NK)/2019/6740 dated 07.03.2019. The delay in grant of OC, if any, is solely attributable to internal working of TCP and not due to answering respondents and as such it was beyond the control of the respondent. A copy of Occupation Certificate dated 07/03/2019 is annexed as Annexure-R3.
- (xii) That the period within which the project was to be completed and possession of the unit was to be handed over to the complainant, such period was marred by many incidences like Jat Stir in the year 2016. Due to Jat Agitation the business and construction activities were adversely affected in the region including the area of the Project. Other incident relating to arrest of Ram Rahim in year 2017- 2018 also created atmosphere of violent and fear. This also adversely affected the movement of business, construction, labour, transport in the area of the Project. The Government's decision of demonetization during that time created paucity of cash and adversely affected the cash flow. This has a slowdown effect on the construction activities in the Real Estate projects all around and adversely affected the present project also. That the Policy of Demonetization introduced by the Government of India was of significant consequence as numerous



persons including the answering respondents suffered shortage of cash, which affected the progress of the construction work. That the shortage of cash ensuing as a result of the Demonetization policy resulted in the stopping of work since the process of construction requires many payments to be made in cash on a day to day basis, for example, wages paid to daily wage workers, payments made against delivery of construction materials, etc. The implementation of GST also brought new tax regime and while adopting the same, the changeover affected the progress of the Project. Though all these effects were only temporary in nature yet had a lasting impact on the overall progress of the Project. All these factors were beyond the control of the answering respondents. The relevant documents in this regard are attached as Annexure-R4.

(xiii) That the complainant himself is a defaulter and there are a series of defaults on his part. The complainant was never serious towards making payments. Despite repeated reminders, the complainant made only following payments within the stipulated time period:

- A) Payment of ₹2,50,000/- on 19/01/2013, i.e., at the time of booking;
- B) Payment of ₹50,000/- on 19/04/2013;
- C) Payment of ₹4,00,000/- on 28/04/2015;
- D) Payment of ₹4,00,000/- on 23/12/2015;



Totalling to ₹11,00,000/- till 23/12/2015 and thereafter stopped making payments to the respondent despite the fact that construction at the project was in full swing and repeated reminders for payments were sent to him.

- (xiv) That the respondents regularly intimated to the complainant about the status of development of the project and payments due through letters dated 11/07/2017, Legal Notice dated 30/08/2017, Letter dated 09/12/2017, Letter dated 10/04/2018. The copies of these letters are annexed as Annexure-R5 to Annexure R8 respectively.
- (xv) That the complainant was also made offer of "fit out possession" vide letter dated 16/07/2018. Complainant was also requested for his permission to carry fitout work in unit booked by him vide letter dated 05/10/2018 and was also reminded again to clear his dues. However, the complainant never responded to such letters and kept horribly mum all these years. The copies of letters dated 16/07/2018 and 05/10/2018 are annexed as Annexure-R9 to Annexure-R10.
- (xvi) That even though the complainant had made payment of ₹11,00,000/- only, the respondents offered him actual physical possession of the unit vide letter dated 15/04/2019 but despite receipt of the letter, the complainant did not come forward to take possession and clear his outstanding dues. Thereafter various letters calling him to take



possession, execute conveyance deed and clearance of outstanding dues were sent to the complainant between 24/01/2020 to 04/11/2020 but the complainant responded to none of them and kept silent throughout. The copy of offer of possession letter dated 15/04/2019 is annexed as annexure Annexure-R11. The copies of reminder letters dated 24/01/2020, 12/10/2020 and 04/11/2020 are collectively annexed as Annexure-R12.

That it was only in the years 2021 and 2022, the complainant made following payments:

- a) Payment of ₹500/- on 21/01/2021;
- b) Payment of ₹5,46,100/- on 27/01/2021;
- c) Payment of ₹5,40,000/- on 12/02/2021;
- d) Payment of ₹10,00,000/- (₹5,00,000/- + ₹5,00,000/- on 17/08/2021;
- e) Payment of ₹5,00,000/- on 01/09/2022.

In this way, complainant, in totality, deposited a total payment of ₹36,86,600/- inclusive of taxes, i.e., an amount of ₹33,86,127/- towards the sale consideration of the unit and an amount of ₹3,00,473/- towards the taxes of the unit.

(xvii) That again a number of letters calling upon complainant for execution of conveyance deed, settlement of account and taking possession of unit were sent to the complainant on 29/06/2022,



11/01/2023, 15/05/2023 and 10/08/2023 but all these letters came back unserved with remarks "Addressee left without instructions" whereas, all the correspondence/ communication with complainant was always served on same address since the year 2013. As such it is clear that complainant, in connivance, with delivery agent intentionally refused to accept any communication/ letter from the answering respondents. The copies of Letters dated 29/06/2022, 11/01/2023, 15/05/2023 and 10/08/2023 are collectively annexed as Annexure-R13.

(xviii) That from the perusal of demand letter dated 20/06/2023 annexed by the complainant at page no.46 of his complaint, it is clear that complainant was well aware of the fact that an amount of ₹24,99,288/- is due and payable towards the booking/ unit but despite making payment of the same, complainant out of ulterior motives serves legal notice dated 23.09.2023 through his counsel and raise false plea to avoid making payment of due amount. Proper reply dated 11.10.2023 was sent to the legal notice of the complainant. Where entire position was cleared and clarified that an amount of ₹. 87,873/- is due and payable towards the cost of unit and an amount of ₹24,11,415/- is due and payable towards interest on delayed payments and other dues. Complainant was again called upon to clear his outstanding dues but complainant again kept mum and did



not approach the respondents. Copy of reply dated 11/10/2023 is annexed as Annexure -R14.

- (xix) That respondents in discharge of their obligations again sent letter for execution of conveyance deed upon clearance of outstanding dues vide letter dated 08/12/2023 but then again the said letter came back unserved with remarks "Addressee left without instructions" due to illegal connivance of complainant with delivery agent. The copy of letter dated 08/12/2023 is annexed as Annexure-R15.
- (xx) That it is a well settled law that a person who does not do equity cannot expect equity in his favour. The complainant had made persistent defaults in making payments and for this reason he is liable to pay interest for delay payment and amount left towards cost of unit which as on 20/05/2024 comes to ₹87,873/ and an amount of ₹24,23,512/- towards interest on delayed payments @ 15% p.a. and other dues). In the absence of making above payments, the complainant is not entitled to take possession of his unit and execute conveyance deed. The copy of Statement of Account dated 20/05/2024 is annexed as Annexure-R16.
- (xxi) That when the complainant himself has committed defaults, cause irreparable losses and injuries to the answering respondents by not making timely payments, the complainant cannot allege deficiencies on part of respondents. In view of the above mentioned facts and



circumstances, the complainant is not entitled for any relief as claimed by him in his complaint and the complaint deserves to be dismissed with heavy costs, in the interest of justice.

(xxii) It is denied that it is clearly mentioned in the BBA that the total sales consideration for the unit in question is only an amount of ₹33,46,500/-. It is also wrong and denied that it was specifically agreed between the parties that the aforementioned sales consideration is inclusive of all charges and also wrong and denied that no other hidden charges exist in the present transaction or that no further demands other than the sale consideration as mentioned in BBA will be charged by the respondents.

(xxiii) It is wrong and denied that the complainant on multiple occasions shared its grievances relating to the completion of the project and the possession of the same but the respondent hopelessly and miserably failed to address the concerns and grievances of the complainant or that continued to raise demands of money and compelled the complainant along with home buyers to make payment in lieu of the sale consideration or else the allotment of the unit will be cancelled and total money paid will be confiscated.

(xxiv) It is wrong and denied that despite of the fact that the total consideration as per the BBA executed between both the parties was only ₹33,46,500/- but the complainant has paid an amount of



₹36,86,600/- to the respondent. It is also wrong and denied that in regard to the sum of ₹24,11,415/- demanded by the respondents vide demand letter dated 20/06/2023 on pretext of delay interest on the said unit, the complainant was never informed despite of the fact that the complainant repeatedly asked the respondents to furnish the details of the same. The complainant has presented here a bundle of lies which does not have any water in the eyes of law.

(xxv) Accordingly for the reasons mentioned above, which were always in the knowledge of the complainant, the answering respondents have raised a demand of ₹24,99,288/- and not an amount of ₹24,11,415/- (as wrongly alleged by the complainant in his complaint), i.e., an amount of ₹87,873/- is due and payable towards cost of the unit and an amount of ₹24,11,415/- is due and payable towards interest on delayed payments and other dues. Furthermore, due to the continuous and persistent defaults in making payments on the part of the complainant, the complainant as on 20/05/2024 is liable to pay an amount of ₹81,123/- towards cost of the unit plus ₹6,750/- towards taxes of the unit and an amount of ₹24,23,512/- towards interest on delayed payments @ 15% p.a. and other dues. In the absence of making above payments, the complainant is not entitled to take possession of his unit and execute conveyance deed.



(xxvi) That Respondent no. 3, i.e., M/s Javier Management Services Private Limited is the maintenance agency nominated by the answering respondents who is looking after the maintenance of the project. As per the terms of the BBA, the complainant in clause 10 has agreed that the answering respondents may in its sole discretion nominate a maintenance agency for the maintenance of the project, which charges shall be payable by the complainant. The complainant was under an obligation to execute maintenance agreement. The complainant in clause 9 was also been informed and agreed that failure to execute maintenance agreement and/ or to pay on or before its due date the maintenance charges etc. shall be termed as an event of default on the part of complainant and further agreed that decision of builder in this regard shall be final and binding on the buyer. Moreover, the obtaining of No dues Certificate from the maintenance agency, i.e., respondent no.3 is a "sine qua non" to take possession and execute conveyance deed of the unit.

(xxvii) That the answering respondents have been constantly and repeatedly sending letters to complainant to take possession and execute conveyance deed but it is the complainant who is avoiding all communications as also detailed in above paras of this reply. So far as the mails sent by complainant are concerned, from the perusal of his e-mail dated 11/03/2024 at page no.57 of complaint, it is clear



that the complainant was duly served with the possession letter and communications sent by the answering respondents due to the fact that they were lost by the complainant, the complainant demanded them again from the answering respondents and rest of the e-mails annexed by the complainant are only in relation to receipt of the payments.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:


5. Ld. counsels for the complainant and respondent reiterated the facts of the complaint and reply respectively. Ld counsel for complainant stated that he has filed the calculations sheet to rebut the calculations submitted by the respondents and confirms that complainant has taken possession on 21.12.2024.

F. ISSUE FOR ADJUDICATION

6. (i) Whether complainant is entitled for possession of the flat in terms of Section 18 of RERA, Act of 2016?
(ii) Whether the relief sought by the complainant for quashing illegals demand letter dated 20.06.2023 issued by the respondents is justified?

G.OBSERVATIONS AND DECISION OF AUTHORITY

7. Admittedly, unit no.C-504, 5th floor, in Tower C having an approx. super area of 1725 sq.ft was allotted to complainant in the project namely; "White Lily"; the builder buyer agreement was executed on



07.01.2024. As per pleadings of complainant, complainant had paid an amount of ₹36,86,600/- against the basic sale price of ₹33,46,500/- as agreed between the parties at the time of booking of the unit. Contention of the respondent is that total sale consideration of the unit was an amount of ₹33,46,500/-, which is exclusive of service and other taxes of the unit. In this regard, it is important to refer to the terms and conditions of the builder buyer agreement executed between the parties. As per payment plan at page no. 38 of the complaint file, total sale consideration of the unit is ₹33,46,500/- and it is mentioned that the above figures does not include Service tax and will be charged as applicable. Also, Schedule of payment (Annexure I, of BBA) mentions that basic sale consideration amount is ₹25,87,500/- + Service tax applicable ; PLC ₹2,58,750/- + Service tax applicable; Club Membership Charges- Complementary per flat; Car parking charges-Complementary per flat; Power Backup charges- Complementary for 3KVA; EDC/IDC & other govt. statutory charges ₹290/- per Sq. Ft ₹500250/-. **Clause 1.3** of the BBA mentions that buyer agrees and confirm the basic sale consideration amount for the said flat is exclusive of EDC/IDC, all taxes, duties, levies on the inputs/purchases of Builder, i.e, VAT, Work Contract Tax, surcharge, Service tax, Labour Cess, Education Cess or any other tax levied or to be levied in relation to the construction or sale of the said flat or the



said project or any incidental activities. Meaning thereby, that total sale consideration of the flat is exclusive of the services taxes and other taxes and charges. As complainant has himself agreed and signed the builder buyer agreement, therefore, he will be bound by the such terms of BBA and liable to pay the same. Hence, the total sale consideration of the flat is ₹33,46,500/- exclusive of other taxes and charges. It is admitted that complainant paid an amount of ₹36,86,600/-.

8. Now as per clause 6(i) of BBA dated 07.01.2014, builder was under an obligation to hand over the possession of the flat within 42 months from the date of signing of agreement with grace period of 6 months subject to force majeure conditions. That means, possession was to be handed over by the respondent upto 07.01.2018. In this regard, Authority observes that 6 months grace period is already granted to the builder as per the BBA and complainant himself agreed in his pleadings that deemed date of possession was 07.01.2018, therefore, deemed date of possession for the present matter is treated as 07.01.2018. However, respondents failed to hand over the possession of the flat till the deemed date. Respondents had applied for the grant of occupation certificate on 07.03.2018. Respondents offered fit out possession vide letter dated 16.07.2018 and requested to carry out the fit out works in the flat. Thereafter, respondents received the



occupation certificate from the competent authority on 07.03.2019 and offered legally valid possession of flat vide letter dated 15.04.2019 along with statement of account. However, despite that complainant did not come forward to take the possession. As per settled law that offer of possession accompanied with occupation certificate is valid offer of possession.

9. After offer of possession, respondents issued letter dated 24.01.2020 for execution of conveyance deed, reminder letter dated 12.10.2020, forfeiture notice on account of non payment of dues dated 04.11.2020 mentioning that an amount of ₹26,74,473/- along with interest is due. However, complainant did not come forward to make any payments. In this regard, on 28.10.2024, "*.....Authority put specific question to the complainant as what steps complainant took after receiving of the offer of possession from the respondents in the year 2019? To this, ld counsel for complainant stated that complainant did not receive the said offer of possession issued by the respondent nor complainant received any emails from the respondent as from 2017 till 2021, complainant was out of country. Complainant returned to India in the year 2021. After returning, complainant visited the office of the respondent and made payments to the respondent in the year 2022. Now, the complainant prays for relief of possession of the unit along*



with delay interest and quash the illegal demand of ₹24,11,415/- raised vide letter dated 20.06.2023."

Perusal of the letters and postal receipts attached by the respondents reveals that all the letters were issued to the address of the complainant, however, said letters were returned to the respondent with report "Addressee left without instructions", which implies that respondents had fulfilled their liability by sending letters at the address of the complainant. Contention of the complainant that he did not received all the letters is an excuse from running away of his liability to pay the dues. It was the duty of the complainant to contact the respondent regarding stage of construction and details of payments after making initial payments way back in the year 2015. It is only in the year 2021 and 2022, complainant made payment of ₹25,86,600/-. In totality complainant paid an amount of ₹36,86,600/- till the year 2022. Respondent again issued letter dated 29.06.2022, 11.01.2023, 15.05.2023 and 10.08.2023 for execution of conveyance deed, settlement of account and possession of unit. Complainant did not make any correspondence to the letters issued by the respondent.

10. As the main relief of the complainant is seeking possession of the flat alongwith delay possession charges, on 28.10.2024, this Authority has passed the following directions: ".....Authority directs the respondent to offer physical possession of the unit to the complainant



without receiving any amount and signing of any undertaking. Further, respondent is directed to send a written communication to the complainant for arranging an in-person visit, specifying the time, date and contact details of the person who will be available during the complainant's site visit. Further, if any deficiencies are pointed by the complainant that will be rectified by the respondents till 25 December 2024.

Authority further directs the respondent to file fresh details of receivables and payables as per provisions of RERA Act of 2016 and Rules and Regulations formed thereunder in the registry with an advance copy supplied to the complainant.

On 10.02.2025, Id counsel for the respondent no.1 and 2 made following submissions in compliance of order dated 28.10.2024:

i. That respondents had arranged the site visit for the complainant and complainant mother visited the unit after duly authorized by the complainant. Accordingly, possession of unit no. C-504 at White Lily, Sector-8, Sonipat is handed over to the complainant's mother. Possession letter dated 21.12.2024 and no objection certificate are also issued to her which are annexed with the application.



- ii. That as per the statement of account issued by the respondents an amount of ₹18,87,095/- is due on part of complainant which is exclusive of registration charges and stamp duty.
- iii. That an amount of ₹1,51,978/- is payable by the respondent no.1 and 2 to the complainant on account of delay in offer of possession.
- iv. That the amounts of receivables and payables is calculated as per the provisions of RERA Act of 2016 and Rules and Regulations formed thereunder. And the statement of receivables even though the interest rate is mentioned as 15% p.a. but delay payment interest is calculated at 11.10% as per RERA rules and figure of 15% is written for the reasons that same is system generated from the accounting software of the respondent no.1 and 2.

On 10.02.2025 and 07.04.2025, during hearing of the case, both the parties confirmed that complainant has taken the possession of the flat on 21.12.2024. Hence, the issue no. (i), i.e, whether the complainant is entitled for possession of the flat in terms of Section 18 of RERA Act, 2016 stands satisfied.

11. Now, the issue which remains to be adjudicated is that complainant has challenged the demand letter dated 20.06.2023 issued by the respondent which shows an outstanding payable amount of ₹24,99,288/- (₹8,87,300/- + ₹16,11,988/-), which as per the complainant version is not payable as complainant had already paid over and



above the sale consideration. Authority observes that as per the directions of the Authority respondent no.1 and 2 offered physical possession of the flat along with fresh statement of receivables and payables dated 24.12.2024. Also, complainant vide its rebuttal dated 01.04.2025 filed calculation sheet challenging the receivable and payables dated 24.12.2024. Therefore, Authority deems it fit to adjudicate on the fresh statement of receivables and payables dated 24.12.2024. Perusal of said document reveals, that an amount of ₹87,873/- is pending amount towards the unit and ₹17,99,222/- is delay payment charges, payable by the complainant.

Amount of ₹87,873/- includes ₹6123/- labour cess, ₹37,500/- IFMS and ₹44250/- Sinking fund. Authority observes that this amount is payable by the complainant for the reason that this amount is towards the unit and to be borne by the complainant as per clause 1.3 of the builder buyer agreement. As demand of ₹87,873/- was due from 22.03.2019, therefore, interest on said amount at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from due date till date of this order will be payable by the complainant to the respondent. Interest is calculated for reference:



Due date	End date	Principal amount	Interest rate	Interest amount
22.03.2019	07.04.2025	₹87,873/-	11.10	₹59,031/-

12.Regarding amount of ₹17,99,222/-, Authority observes that respondent has no where, either in its reply or in statement of account submitted vide application dated 27.01.2025, mentions that how the said amount is arrived by the respondent. The statement of account attached mentions that respondent has charged interest @ 15% p.a on all delayed payments. During arguments Ld. counsel for the respondents submitted that it is charged @ 11.10% and not 15%. Respondent has not given detailed explanation regarding the interest part, i.e , to say when the demand were raised and when they were paid and how much interest is accrued. In absence of detailed explanation and documentary evidence on record, respondent is not liable to recover the said amount.

With regard to delay possession charges, Authority observes that an amount of ₹11,00,000/- was paid from the 19.01.2013 to 23.12.2015, that means before the deemed date of possession which was 07.01.2018. Delay possession charges are payable from the deemed date of possession till valid offer of possession (i.e. 15.04.2019). As remaining payments of ₹ 25,86,600/- were made by the complainant



after valid offer of possession, therefore no delay possession charges are admissible to the complainant on the payments made after valid offer of possession. The Authority finds it a fit case to allow delayed possession charges on the amount paid by the complainant prior to the deemed date, i.e., 07.01.2018 to the date on which a valid offer is sent to complainant after obtaining completion/occupation certificate 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".*

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. 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".

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., 28.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%. Authority has got calculated the interest on paid amount of ₹11,00,000/- from the deemed date of possession i.e., 07.01.2018 till the valid offer of possession, i.e, 15.04.2019 at the rate of 11.10% as per detail given in the tables below:



Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 15.04.2019
1.	₹11,00,000/-	07.01.2018	₹1,55,218/-

13. As per the table in para 11 of this order complainant is liable to pay an amount of ₹1,46,904/- (₹87,873/-+ ₹59,031/-) to the respondent.

And as per table in para 12, respondent is liable to pay an amount of ₹1,55,218/- as delay possession charges to the complainant.

Therefore, after adjustment, respondent is liable to pay an amount of ₹8,314/- to the complainant.

14. Relief under clause (iii) was neither pressed upon nor argued.

Therefore, no observation is made in this regard.

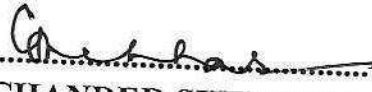
DIRECTIONS OF THE AUTHORITY

15. 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 an amount of ₹8,314/- as to the complainant as mentioned in para 13 of this order within next 15 days after uploading of the order



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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

