



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

|                               |                     |
|-------------------------------|---------------------|
| <b>Complaint no.:</b>         | <b>3253 of 2022</b> |
| <b>Date of filing:</b>        | <b>19.12.2022</b>   |
| <b>First date of hearing:</b> | <b>28.02.2023</b>   |
| <b>Date of decision:</b>      | <b>09.09.2025</b>   |

Shailender Kumar

376/13, Gali No. 3, Vijay Nagar , Balor Road,

Bahadurgarh, Jhajjar, Haryana, 124507

....COMPLAINANT

VERSUS

Ruhil Promoters Private Limited

DSM-538, DLF Tower, DLF Shivaji Marg,

Motinagar, 110015

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Present: -** Adv. Ashish Kumar, Ld. Counsel for Complainant through VC

Adv. Kamal Dahiya, Ld. Counsel for Respondent through VC

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

1. Present complaint was filed on 19.12.2022 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS:**

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

| Sr. No. | Particulars                    | Details  |
|---------|--------------------------------|--|
| 1.      | Name of the project.           | Ruhil Residency, Sector-3, Bahadurgarh                     |
| 2.      | Nature of the project.         | Residential  |
| 3.      | RERA Registered/not registered | Registered vide Registration No. 139 of 2017               |
| 4.      | Details of Unit.               | Apartment no. A-504, floor no. 5 <sup>th</sup> Block/Tower |



|     |   |   |
|-----|---|---|
| 5.  | Date of Builder/<br>Apartment Buyer<br>Agreement      | 18.01.2013  |
| 6.  | Due date of possession                                | 18.07.2016  |
| 8.  | Possession clause in<br>BBA (Clause 9.1)              | <i>"Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs etc., the Developer proposes to complete the construction within a period of 36 months from the date of execution of this agreement with grace period of 180 days under normal circumstances."</i> |
| 9.  | Basic sale<br>consideration                           | Rs. 34,16,000/-   |
| 10. | Amount paid by<br>complainant                         | Rs. 39,63,694/-   |
| 11. | Whether occupation<br>certificate received or<br>not. | Occupation certificate received on<br>17.03.2022  |

**B. FACTS OF THE PRESENT CASE AS STATED BY THE  
COMPLAINANT IN THE COMPLAINT:**

3. In captioned complaint, allottee had booked an apartment bearing no. A- 402, by paying Rs. 3,50,000/- in respondent's project, "Ruhil Residency", Sector-3, Bahadurgarh" in the year 2011.

*Rabhee*



4. That vide letter dated 24.12.2011, respondent changed the unit of respondent from unit no. A-402 to unit no. A-504 admeasuring area 1708 sq. ft. Complainant was assured by the respondent that 3 split Ac's will be installed in the unit free of cost at the time of giving the possession of the apartment.
5. That apartment buyer agreement was executed on 18.01.2013 for the unit no. A-504, floor no.5<sup>th</sup> block/tower no. A-4. That till date of execution of the agreement for sale respondent took near about 10 lakhs rupees against the basic cost of the unit i.e. Rs. 34,16,000/- which comes to 29.28% of the total consideration of the unit. Complainant paid Rs. 39,63,694/- out of total sale consideration of Rs. 34,16,000/-
6. That more than 11 years has been lapsed from making the first payment of the unit, the respondent had failed to handover the possession of the said apartment to the complainant.
7. That respondent had demanded club membership charges even though club is not constructed till date. Further respondent had started asking for the maintenance charges without giving the physical possession of the unit and without executing any maintenance agreement which is totally illegal and unfair trade practice done by the respondent.
8. That respondent had demanded Rs. 3,00,000/- for the stair case, which was never the part of the agreement and now because of their structural default the



stair cases was added in the building, which needs to be borne by the respondent itself.

9. That as on date the said work in respect of the building is not properly complete and is not in a condition that one can use the facilities and amenities for which they are raising demand for the maintenance. The common area are not properly managed and still a lot of work is pending on the part of the respondent.

**C. RELIEF SOUGHT**

10. That complainant seeks following relief and directions to the respondent:-
- i. Direct the respondent to hand over the possession of the above mentioned unit with all the amenities, fitting and fixtures as per the agreement.
  - ii. Directing the respondent to pay the delay interest as per the act till the time the respondent failed to handover the physical possession of the unit.
  - iii. Directing the respondent to execute the conveyance/sale deed executed in favor of the complainant in respect of the above mentioned unit.
  - iv. Direct the respondent not to raise any demands in respect of the club membership till the time it is not constructed, nor to take any



maintenance charges till date the physical possession is not handed over to the complainant.

- v. Direct the respondent to bear the expenses of the staircase which was never the part of the agreement and because of the default of the respondent the said charges for the stair case needs to be paid by the respondent itself.
- vi. Any other order or relief which this Hon'ble Authority deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the complainant and against the respondent.

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

Learned Counsel for respondent filed reply on 18.05.2023, pleading therein:

- 11. That the complainant had booked one unit in the project of the respondent namely "RUHIL RESIDENCY" situated at Sector-3, Sarai Aurangabad Village, Bahadurgarh, Distt. Jhajjar, Haryana-124507. Complainant was allotted unit no. A-504, Floor No. 5th Block/Tower No. A-4 admeasuring approx. 1708 Sq. Ft.
- 12. That the said project of the respondent is consisting of two phases i.e. Phase I and Phase II. Phase I includes Tower A, B, C, D, EWS, Commercial shops and Phase II includes Tower E, F, G, H, I, J & Low Rise and Primary School. It is submitted that the construction of the entire project including





both the phases has been completed and the occupation certificate has also been issued from the concerned department on 17.03.2022

13. That the complainant is a chronic defaulter as the complainant never adhere to the payment plan opted by him and made several defaults in payment of installments against the unit in question. The complainant even after repeated requests and reminders of the respondent did not clear his outstanding dues. It is further submitted that the complainant had been informed about completion of the project and receipt of occupation certificate and also requested to clear the payment due against his unit. However to cover his own wrong, the complainant filed the instant complaint.
14. That due to force majeure conditions there was delay in construction of the project and now the construction of the said unit is complete and the respondent is ready to give the possession as the occupation certificate from the concerned department has been issued.
15. That respondent stated that complainant had not approached this Authority with clean hands, since complainant had concealed the material facts that possession had already been offered to the complainant vide letter dated 10.05.2022. However, complainant denied to take possession of the unit in question without any substantive reason. Hence the complainant is



liable for breach of provision of section 19(10) of the RE(R&D) Act 2016 as the complainant is at fault for not taking possession even after issuance of offer of possession letter.

**E. ISSUES FOR ADJUDICATION**

16. Whether the complainant is entitled to relief of possession of a residential unit booked by him along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?
17. Whether the complainant is liable to pay maintenance charges, club membership charges and staircase charges?

**F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

18. Facts set out in the preceding paragraph demonstrate that complainant booked a unit no. A-402 in the year 2011 in respondent's project, "Ruhil Residency", Sector-3, Bahadurgarh." Unit no. A-402 later changed to A-504 vide letter dated 24.12.2011. That apartment buyer agreement was executed on 18.01.2013 for the unit no. A-504, floor no.5<sup>th</sup> block/tower no. A-4. Complainant is aggrieved by the fact that respondent has despite having paid Rs. 39,63,694/- against basic sale price of Rs. 34,16,000/- failed to offer possession within the stipulated time.
19. As per clause 9(i) of apartment buyer agreement respondent was obliged to handover the possession of unit within a period of 36 months from the date of





execution of this agreement with grace period of 180 days under normal circumstances i.e. by 18.07.2016 however it is a matter of record that possession was not handed over to complainant within the stipulated time.

20. Respondent in its reply has averred that possession was subject to force majeure conditions, therefore respondent is not at default. Respondent has further averred that possession had already been offered to complainant vide intimation of occupation/offer of possession for fit out dated 10.05.2022, wherein respondent informed the complainant that it had received occupation certificate and invited complainant to come forward to take the possession after clearing dues. However, it is the complainant who did not come forward to take the possession.
21. With regard to respondent's defence of force majeure condition causing delay in handing over possession, Authority observes that there is no document placed on record by respondent to show or to prove that any force majeure condition occurred or existed during the 42 months' period from execution of agreement for sale that could have attributed to any delay in completion of construction and handing over of possession. Hence, it was an obligation on the respondent to hand over the possession of the unit by 18.07.2016, however, possession was not offered within the stipulated time.



22. Respondent is relying upon the intimation of occupation certificate/offer of possession for fit out dated 10.05.2022 wherein respondent informed the complainant that occupation certificate has been received by respondent and requested complainant to come forward to take possession after clearing dues specifically. Complainant in its replication has denied receiving such letter dated 10.05.2022. On perusal of file Authority observes that respondent has not attached/placed on record any proof of delivery of intimation of possession letter dated 10.05.2022. Therefore, in absence proof of delivery of letter dated 10.05.2022 same cannot be presumed to have been served upon the complainant. Nevertheless, vide application dated 07.05.2025 respondent submitted a possession certificate along with certificate of acknowledgement of possession dated 21.10.2023 in the Authority. Complainant did not file any rebuttal to the same, also the possession certificate bears the signature of the complainant i.e. Mr. Shailender Kumar. Hence, possession was handed over to complainant on 21.10.2023. It is also matter of record that as per clause 9(i) of the agreement it was an obligation on the respondent to hand over the possession of the unit by 18.07.2016 and for any delay beyond that respondent after coming into force of Real Estate (Regulation & Development) Act, 2016 is liable to pay delay interest in terms of Section 18 read with Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017. Possession



was offered to complainant on 21.10.2023 i.e. after lapse of more than six years. Hence, he is entitled to delay possession interest from the period 18.07.2016, i.e., due date of possession till the date handing over possession as mentioned in the possession certificate i.e. 21.10.2023, The definition of term 'interest' is defined under Section 2(z a) 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".."*

23. 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 of order i.e., 09.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.
24. 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 on date 09.09.2025 works out to 10.85% (8.85% + 2.00%) from the due date of possession i.e., 18.07.2016 till handing over possession i.e. 21.10.2023.
25. Authority has got calculated the interest on total paid amount which works out to Rs. 30,46,100/- as per detail given in the table below:



| Sr. No. | Principal Amount<br>(in ₹)                    | Deemed date of<br>possession or date of<br>payment whichever is<br>later | Interest<br>Accrued till<br>21.10.2023<br>(in ₹) |
|---------|---|--|--|
| 1.      | 255278  | 20.05.2019   | 122629   |
| 2.      | 3708416                                       | 18.07.2016   | 2923471  |
|         | Total principal<br>amount=<br>Rs. 39,63,694/- |  | Total interest=<br>Rs. 30,46,100/-               |

26. It is further the contention of the complainant that the demands raised vide demand letter dated 21.10.2023 are not in consonance with the builder buyer agreement and are hence not payable. In this regard, it is observed that vide provisional demand letter dated 21.10.2023, respondent had raised a demand of Rs. 9,99,373/- which included demand of Rs. 2,89,293/- on account of basic sale price at offer of possession, Rs. 3,36,000/- on account of staircase charges, Rs. 60,463/- on account of maintenance charges and an interest of Rs. 3,13,617/- till 21.10.2023. Amongst these, charges raised on account of staircase charges and maintenance charges are being opposed by the complainant as they are not in consonance with the buyer's agreement.
27. With regard to staircase charges, it is observed by the Authority that charges raised under 'staircase charges' are for construction of additional staircase for emergency fire safety as per directions by Fire Safety Department. Since the



demand on account of staircase charges has been proportionately charged from the complainant, therefore the complainant is liable to pay the same. Authority in complaint no. 607 of 2018 titled as 'Vivek Kadyan Vs TDI Infrastructure Ltd.' has already laid down the principle for calculation of fire exit stair case.

28. With regard to maintenance charges, it is observed that according to clause 1(viii) of the apartment buyer agreement, the complainant has agreed to pay demand raised on account of maintenance charges, therefore the complainant is liable to pay the same. Maintenance charges become payable after a valid offer of possession is made to the complainant. In present circumstances, the offer of possession was validly made to the complainant on 21.10.2023 as per observations recorded in above paragraph. So, the complainant is liable to pay these charges from 21.10.2023.

29. Complainant also seeking relief to direct respondent to not raise any demands in respect of club membership charges till the time it is not constructed. However complainant did not attach any document which shows that respondent demanded any amount for club membership charges. Therefore, Authority makes no observation on this relief clause.

30. With regard to execution of conveyance deed, Authority is of the considered view that there is no impediment on execution of conveyance deed in favour of an allottee when allottee pays the full consideration and gets the possession.





After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. In the present case, possession has already been handed over to complainant. Accordingly, respondent promoter is obligated/duty bound u/s 17 of the RERA Act, 2016 to execute a registered conveyance deed in favor of the complainant.

#### **G. DIRECTIONS OF THE AUTHORITY**

31. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of Rs. 30,46,100/- to the complainant towards delay already caused in handing over the possession. Interest shall be paid as up till the time as provided under section 2(zb) of the RERA Act, 2016.
- (ii) 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.
- (iii) Complainant will remain liable to pay conveyance deed charges, if any, to the respondent.



- (iv) Respondent is directed to get the conveyance deed registered in favor of complainant within 1 month of date of this order.

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



DR. GEETA RATHEE SINGH  
[MEMBER]

