



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	329 of 2023
Date of filing:	07.02.2023
First date of hearing:	21.03.2023
Date of decision:	09.09.2025

Krishan Mittal and Pardeep Kumar
Flat No 1204, Building No C-2,
Runwal Garden City Balkum Nakka Thane,
Maharashtra, 400608

....COMPLAINANT (S)

VERSUS

Ruhil Promoters Private Limited
Office at Sector-3 Bahadurgarh,
District Jhajjar, Haryana-124507

.....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 07.02.2023 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to 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. J-403, floor no. 4 th , Block/Tower no. J-3



5.	Date of Builder/ Apartment Buyer Agreement	16.08.2013
6.	Due date of possession	16.02.2017
7.	Possession clause in 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>
8.	Basic sale consideration	Rs. 24,80,000/-
9.	Amount paid by complainant	Rs. 27,30,744/-
10.	Whether occupation certificate received or not.	Occupation Certificate received on 17.03.2022

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

3. Facts of the complaint are that complainants applied for a residential apartment in the year of 2012 having saleable area of 1240 sq. ft. in the respondent's



project "Ruhil Residency" located at Sector 3, Sarai Aurangabad Village , Bahadurgarh.

4. That vide allotment letter dated 03.05.2013 unit no. J -403, floor no. 4, Block/ Tower no. J-3 admeasuring area approx. 1240 sq. ft. was allotted to complainants.
5. That apartment buyer agreement was executed between complainants and respondent on 16.08.2013. Complainants had paid Rs. 27,30,744/- against basic sale price of Rs. 24,80,000/-. Complainants further submitted that respondent raised illegal demands and threaten the complainants that if they failed to pay such installment than the respondent/builder will charge penalty in the form of interest on the installment.
6. That as per the terms and condition of the apartment buyer agreement the respondent/builder has to handover the possession of the apartment along with all the amenities, fitting and fixtures within 36 months i.e. by 16.08.2016 and further extended period of 6 months however the respondent/builder failed to handover the possession of the unit on time.
7. That complainants visit the site multiple times and in the year 2021 again went to the respondent and seek for the possession of the unit, however due to the non-completion of the project as on time the builder/respondent failed to handover the possession of the unit.



8. That 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. Complainants further submitted that work in respect of 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 not properly managed and still a lot of work is pending on the part of the respondent/builder.
9. That further the respondent has started making a new demand of 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. The respondent can't make the innocent buyers liable for their default.
10. That the complainants are ready to seek the possession of the unit/apartment which has been booked by them and for the same the complainant asked the respondent/builder to compensate for the delay which has been caused by them as per the provision of the act.

C. RELIEF SOUGHT

11. That complainants 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 complainants in respect of the above mentioned unit.
- iv. Direct the respondent not to raise any demands in respect of maintenance till date the physical possession is not handed over to the complainant and maintenance agreement is not executed by the builder.
- 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. Direct the respondent/builder not to charge any interest in the form of holding charges or on the amount which is payable by the complainant because as on date 90% of the total sale consideration has been paid by the complainants on dated 03.08.2016.
- vii. 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 favor 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:

12. That the complainants 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. Unit no. J- 403, floor no. 4th Block/Tower no. J-3 admeasuring approx. 1240 Sq. Ft. was allotted to complainants vide allotment letter dated 03.05.2013.
13. 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.
14. That the complainants are chronic defaulters as the complainants never adhere to the payment plan opted by them and made several defaults in payment of installments against the unit in question. The complainants even after repeated requests and reminders of the respondent did not clear their outstanding dues. It is further submitted that the complainants were duly informed about completion of the project and receipt of occupation



certificate and also requested to clear the payment due against their unit.

However to cover their own wrong, complainants filed the instant complaint.

15. 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 17.03.2022.

16. That respondent stated that complainants had not approached this Authority with clean hands, since complainants had concealed the material facts that possession had already been offered to the complainants vide letter dated 10.05.2022. However, complainants denied to take possession or clear outstanding dues without any substantive reason. Hence the complainants are liable for breach of provision of section 19(10) of the RE(R&D) Act 2016 as the complainants are at fault for not taking possession even after issuance of offer of possession letter.

E. ISSUES FOR ADJUDICATION

17. Whether the complainants are 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?
18. Whether the complainants are liable to pay maintenance charges, holding charges and staircase charges?



F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

19. Facts set out in the preceding paragraph demonstrate that complainants booked a unit no. J-403, in the year 2011 in respondent's project, "Ruhil Residency", Sector-3, Bahadurgarh". Apartment buyer agreement was executed on 16.08.2013 for the unit no. J-403, floor no. 4th block/tower no. J-3. Complainants are aggrieved by the fact that respondent has despite having paid Rs. 27,30,744/- against basic sale price of Rs. 24,80,000/-, failed to offer possession within the stipulated time.
20. 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 16.02.2017, however, possession was not handed over to complainants within the stipulated time.
21. 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 complainants 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 complainants to come forward to take the possession



after clearing dues. However, it is the complainants who did not come forward to take the possession.

22. 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 16.02.2017, however possession was not offered within the stipulated time..
23. Respondent is relying upon the intimation of occupation certificate/offer of possession for fit out dated 10.05.2022 wherein respondent informed the complainants that occupation certificate has been received by respondent and requested complainants to come forward to take possession after clearing dues specifically. Complainants in their replication have 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 complainants. Nevertheless, vide application dated 07.05.2025 respondent



submitted a possession certificate along with certificate of acknowledgement of possession dated 24.10.2023 in the Authority. Complainants have not file any rebuttal to the same, also the possession certificate bears the signature of the complainants. Hence, possession was handed over to complainant on 24.10.2023. 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 16.02.2017 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. However, possession was offered to complainants on 24.10.2023 i.e. after lapse of more then six years . Hence, complainants are entitled to delay possession interest from the period 16.02.2017, i.e., due date of possession till the date handover of possession as mentioned in the possession certificate i.e. 24.10.2023, 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”.. ”

24. 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%**.



25. 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 % (8.85% + 2.00%) from the due date of possession i.e., 16.02.2017 till 24.10.2023.

26. Authority has got calculated the interest on total paid amount which works out to Rs. 19,69,180/- 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 24.10.2023 (in ₹)
1.	2707670	16-02-2017	1965524
2.	23074	10-05-2022	3656
	Total principal amount= Rs.27,30,744/-		Total interest= Rs. 19,69,180/-

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 complainants, 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 complainants are 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 24.10.2023 as per observations recorded in above paragraph. So, the complainants are liable to pay these charges from 24.10.2023.
29. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by **Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020** decided on 14.12.2020 (supra) wherein it is observed that decides that a developer/promoter/ builder cannot levy holding charges on a homebuyer/ allottee as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case. Also, the respondent is already raising



demand on account of maintenance charges from the complainant. Both these charges cannot be applied parallelly by the respondent.

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. 19,69,180/- to the complainants towards delay already caused in handing over the possession. Interest shall be paid as up till the time as provided under section 2(z) 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) Complainants will remain liable to pay conveyance deed charges, if any, to the respondent at the time of taking over of possession.
- (iv) Respondent is directed to get the conveyance deed registered in favor of complainants within one month of date of this order. Complainant(s) shall pay the stamp duty charges for getting the conveyance deed executed

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


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DR. GEETA RATHEE SINGH
[MEMBER]