



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2686 of 2023
Date of filing:	19.12.2023
First date of hearing:	23.01.2024
Date of decision:	12.08.2025

Mukesh Chander Kaushik S/o Uma Dutt Kaushik

R/o VPO Jahangirpur,

District Jhajjar, Haryana-124507

....COMPLAINANT

VERSUS

Ruhil Promoters Private Limited

Office at Sector-3 Bahadurgarh,

District Jhajjar, Haryana-124507

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Member

Chander Shekhar

Member

Present: - Adv. Jasdeep Singh, Ld. Counsel for Complainant through VC.

Adv. Kamlajeet Dahiya, Ld. Counsel for Respondent through

VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was filed on 19.12.2023 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	I-1004, 10th Floor, Block/Tower I-4, Unit Type-2BHK+2T, measuring super area of 1250 sq. ft.
5.	Date of Builder/ Apartment Buyer	29.03.2013



	Agreement	
6.	Due date of possession	29.09.2016
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.	Total/Basic sale consideration	₹32,52,500/-
9.	Amount paid by complainant	₹29,48,370/-
10.	Whether occupation certificate received or not	Received on 17.03.2022
11.	Offer of possession	08.07.2022

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

3. In captioned complaint, complainant had booked an apartment bearing no. I-1004, 10th Floor, Block/Tower I-4, Unit Type-2BIHK+2T, in respondent's project, "Ruhil Residency", Sector-3, Bahadurgarh" in the year 2013.
4. A builder buyer agreement was executed between the parties on 29.03.2013. As per clause 9(i) of the agreement, respondent had committed to deliver



possession of the unit within 36 months along with a grace period of 180 days. Accordingly, the stipulated period of 42 months from the date of execution of the agreement expired on 29.09.2016. Complainant paid an amount of ₹29,48,370/- against the total sale consideration of ₹32,52,500/-.

5. It is the submission of the complainant that despite a lapse of more than 7 years from the deemed date of possession, respondent has failed to handover possession of the unit in question to the complainant. Instead of delivering possession, respondent had rather raised a demand of ₹3,36,000/- on account of additional cost of staircase charges and ₹44,250/- on account of maintenance charges vide provisional demand letter dated 17.11.2023 alongwith reminder letter-1 dated 17.11.2023. However, the said charges are not a part of the builder buyer agreement.
6. On receipt of abovesaid letters, complainant contacted one of the representatives of the company and asked for the waiver of above said demands as they were never a part of the agreement. Instead of considering the request of the complainant, the representative threatened the complainant that on account of non-payment of the said charges, complainant will not be given the possession of the booked unit failing which the unit in question stands cancelled and the booking/earnest money stands forfeited. The said act of the representative of the company is not just illegal but also shows their intention to make huge loss to the complainant or other allottees; copy the reminder letter-1 dated 17.11.2023 and demand letter dated 17.11.2023 is



annexed as Annexure C-19, C-20. However, respondent again issued reminder letter-2 dated 01.12.2023 to clear the said outstanding dues, copy of which is annexed as Annexure C-22.

7. From booking of the unit till date, 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 delay in completion and development of the project within the time stipulated. The respondent was bound by terms and conditions of the agreement and delivered possession of the unit within time prescribed in the builder buyer agreement.
8. Respondent has miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects even after taking more than 90% payment of the total sale consideration. Therefore, complainant is left with no other option but to approach this Authority. Hence, the present complaint seeking relief of handing over possession of booked unit along with delay interest as prescribed as per RERA Act, on the already paid amounts by complainant from the deemed date of possession i.e. 29.09.2016 till the actual physical delivery of possession.

C. RELIEF SOUGHT

9. That complainant seeks following relief and directions to the respondent:-



- i. Direct the respondent to handover the possession of the above mentioned unit along with all the amenities, fitting and fixtures as per the agreement.
 - ii. Direct 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. 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.
 - iv. 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 staircase needs to be paid by the respondent himself. Further to return the amount taken by the respondent/builder in respect of the staircase from the complainant.
 - v. Direct the respondent/ Builder not to charge any interest in the form of the holding charges.
 - vi. Any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be paases=d in favour of the complainant and against the respondent.
10. During hearing, learned counsel for the complainant reiterated the averments as stated in the complaint. He further submitted that respondent had placed on



record service of proof/receipt regarding offer of possession dated 08.07.2022 by DTDC, however, it is a private service and same does not provide any details as when the letter of offer of possession was served upon the complainant. Therefore, there is no proper proof of service of offer of possession and the liability still relies on the respondent to give a valid and proper proof of service of offer of possession. Further, till date the complainant had not received any offer of possession. Therefore, the complainant prays for valid possession and delayed interest.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned Counsel for respondent filed reply on 22.04.2024, pleading therein:

11. As per builder buyer agreement dated 29.03.2013, respondent had proposed to handover the possession of the unit within a period of 36 months along with a grace period of 180 days from the execution of the agreement. The possession of the unit was to be handed over by 29.09.2016.
12. That respondent filed an application for grant of occupation certificate on 13.01.2020 with the concerned department, which was kept pending with the department and also got delayed due to Covid-19 situation as national lockdown was announced in the entire country. On 17.03.2022, occupation certificate was received by respondent from the concerned department. Respondent submitted that force majeure on account of Covid-19 outbreak be taken into consideration for relaxation as Covid-19 outbreak lead to delay in



handing over of possession. Thus, the Covid-19 period may be taken as zero period for the purpose of calculation of delay possession interest.

13. Time taken by the concerned department since year 2020 for grant of occupation certificate be also taken as one of the force majeure, since respondent had no control over time taken by department allowing to issue occupation certificate. Furthermore, the project is complete in all respects, and the respondent is now offering possession to allottees.

14. 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 08.07.2022 and provisional demand letter dated 08.07.2022. Further, after the receipt of offer of possession dated 08.07.2022, the complainant had been requested on numerous occasions for settlement of dues and taking physical possession which is substantiated from the several reminders issued by respondent to complainant and same was admitted by the complainant (Annexure C-19 and C-22 of the complaint).

15. After persistent requests, complainant visited the office of the respondent on 15.02.2023, however, for reasons best known to him the complainant denied to take possession of the unit. In this way, complainant had violated Section 19(10) of the RERA Act, 2016 for not taking possession after issuance of offer of possession letter.



16. During the course of oral submissions/arguments, ld. counsel for respondent reiterated the submissions made in the reply and further placed on record service of proof regarding offer of possession dated 08.07.2022, and stated that the said offer of possession is completely valid in all aspects. However, the complainant has not paid the outstanding balance towards the booked unit by till date.

E. ISSUES FOR ADJUDICATION

17. 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?

18. Whether the complainant is liable to pay maintenance charges, holding charges and staircase charges?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

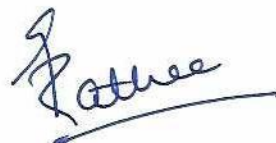
19. Facts set out in the preceding paragraph demonstrate that the complainant had booked an apartment bearing no. I-1004, 10th Floor, Block/Tower I-4, Unit Type-2BHK+2T, in respondent's project, "Ruhil Residency", Sector-3, Bahadurgarh" in the year 2013. A builder buyer agreement was executed between the parties on 29.03.2013. As per clause 9(i) of the agreement, respondent was under an obligation to hand over possession of the unit by 29.09.2016. Admittedly, an amount of ₹29,48,370/- had been paid against the total sale consideration of ₹32,52,500/-.



It is the submission of the complainant that respondent has delayed the delivery of the possession beyond stipulated period of time. Complainant is, further, aggrieved by the fact that instead of delivering possession, respondent had further raised illegal and arbitrary demands in respect of staircase charges, maintenance charges and holding charges vide provisional demand letter dated 17.11.2023 which are not in consonance with the terms of the agreement. The complainant has submitted that he has not received the possession of the unit in question till date.

20. Authority observes that as per builder buyer agreement executed between the parties, possession of the unit should have been delivered by 29.09.2016. However, the respondent has failed to deliver possession of the booked unit within the stipulated time period. Respondent has attributed this delay in delivery of possession to force majeure conditions on account of COVID outbreak and the time taken by the department in issuing occupation certificate.

The possession of the unit in question became due on 29.09.2016. It is a matter of fact that COVID-19 outbreak hit construction activities post 22nd March 2020 i.e more than three years after the lapse deemed date of possession. The possession of the unit had already been delayed for a long period of time even before the COVID-19 halted construction. The respondent had failed to construct the project on time and deliver possession to the complainant. Therefore, as far as delay in delivery of possession of the

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unit in question 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 Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.S 3696-3697/2020" dated 29.05.2020, wherein Hon'ble High Court 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.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

Respondent has also cited departmental delay in issuing occupation certificate as a force majeure condition. In this regard, it is observed that respondent had committed to deliver the possession of the unit by 29.09.2016, meaning thereby that respondent should have applied and



obtained the occupation certificate before 29.09.2016, however, as per record, the respondent had applied for issuance of occupation certificate on 13.01.2020 i.e., after lapse more of the 4 years and thereafter the same was issued on 17.03.2022. Furthermore, respondent has taken a defense that the period for which the occupation certificate was pending before the competent Authority be excluded for the delayed period as the delay in issuance of occupation certificate is attributable to the competent Authority and not the respondent. There is no document on record to show that the application for occupation certificate was complete as in all aspects and there was no deficiency in the application that was conveyed to them. Moreover, the Authority has already included the grace period of 180 days as provided in the agreement to sale while computing the due date of possession. No case for further concession is made out.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession had already passed and the delivery of possession had been long due. Respondent cannot be allowed to take advantage of delay caused in delivery of project due to its own conduct and hence, the claim of the respondent is rejected.

21. As per observations recorded above, the possession of the unit in question should have been delivered by 29.09.2016. However, respondent failed to complete construction of the unit and deliver possession within the time period stipulated in the buyer's agreement. Thereafter, an offer of possession



was issued to the complainant on 08.07.2022 after receipt of occupation certificate on 17.03.2022. This offer of possession was not accepted by the complainant on grounds that the same was only for fit out purposes and the respondent company had failed to issue a statement of account of payables/receivables amount with regard to the unit in question to the complainant and thus the alleged offer of possession was incomplete.

22. In this regard it is observed that respondent had issued an offer of possession to the complainant on 08.07.2022, in which it had been categorically mentioned that the project in question namely 'Ruhil Residency' is in receipt of occupation certificate dated 17.03.2022 and the unit of the complainant is ready in all respects for taking possession. Vide said offer of possession the respondent had invited the complainant/allottee to come forward and take possession of the unit after clearing all dues. Along with said offer the respondent had also issued a provisional demand letter dated 08.07.2022 to the complainant for making payment of outstanding amount in respect of the unit in question. Through this letter, respondent had also duly asked the complainant to visit the office of the respondent company to initiate the process of handing over of possession. It is the submission of the respondent that in pursuance of this letter the complainant had visited the office of the respondent on 15.02.2023, however, the complainant deliberately chose not to make payment of outstanding amount for reasons best known to him. The respondent has placed on record a copy of diary entry dated 15.02.2023 of



the attendance register of site visit (at the site of the project) wherein the name of the complainant has been mentioned for entry dated 15.02.2023 as a proof of the visit of the complainant. Since the complainant had failed to make payment of further dues, thereafter the respondent had issued multiple demand/ reminder letter dated 17.11.2023 and 01.12.2023 to the complainant for making outstanding payment.

The complainant in its pleadings has denied receiving this letter of offer of possession alongwith provisional demand letter and visiting the office of the respondent on 15.02.2023. Complainant has admitted to receiving reminder letter dated 17.11.2023 and 01.12.2023 only. In view of the contradictory submissions of both the parties, Authority solely relies on the documentary evidence and it is observed that with regard to the visit of the complainant to the office of respondent, the respondent is merely relying on a handwritten entry of a page of a register which bears the name of the complainant. This page does not bear any signature of complainant and/or of the signatory respondent company to substantiate veracity. The respondent has only filed a piece of paper in the name of register entry and not produced the original register of records. Hence, the said document cannot be relied upon. It is further observed that the respondent had issued multiple documents to the complainant's address, namely, "*VPO Jahangirpur, District Jhajjar, Haryana-124507*,"; offer of possession dated 08.07.2022 along with provisional demand letter, reminder letter-1 dated 17.11.2023 and reminder



letter-2 dated 01.12.2023. Along with these letters the respondent has attached postal receipt as proof of receipt. Although all these documents have been sent on the same address, however, the complainant has admitted to having received only the latter two reminder letters dated 17.11.2023 and 01.12.2023. The respondent in its submissions has placed on record dispatch/postal receipt along with these letters as proof. On perusal of record, it is observed that along with letter of offer of possession the respondent has placed on record a copy of dispatch slip dated 08.07.2022 of a private courier company, however there is no proof of service/delivery of the same upon the complainant. Further for the remaining two letters the respondent has placed on record registered dak receipt by India post. The complainant is denying the receipt of letter of offer of possession and the Authority is unable to rely on merely a dispatch slip of a private company and also there is no tracking report along with the same to establish veracity of service upon the respondent. Hence, the same cannot be considered a valid proof of service. Whereas the reminder letter dated 17.11.2023 and 01.12.2023 has been admitted to having been received by the complainant and also the dak id receipt is of a government agency and the same cannot be doubted. Meaning thereby that after receipt of reminder letter dated 17.11.2023 the complainant was made aware of the offer of possession qua the unit in question. As on 17.11.2023 the complainant was intimated that there was impediment in taking possession of the unit in question and

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thereafter the obligation of the complainant had begun. Thus, the offer of possession dated 08.07.2022 issued by the respondent validly culminated after payable and receivables got conveyed to the complainant on 17.11.2023. After issuance of this demand letter, there seemed to be no impediment in initiating the process of taking over of possession on the part of the complainant. The communication with regard to taking over of possession got duly completed when the pending dues in respect of the unit were communicated to the complainant. Complainant could have taken over the possession of the unit on 17.11.2023 after making payment of the outstanding amount.

23. Now in respect of the demands raised vide provisional demand letter dated 08.07.2022, it is the contention of the complainant that the respondent has illegally raised demand on account of maintenance charges, staircase charges and club charges. In this regard it is observed that vide provisional demand letter dated 08.07.2022, respondent had raised a demand of ₹9,06,991/- as outstanding payment which included ₹2,36,000/- on account of start of internal fittings, ₹2,20,000/- on account of basic sale price at offer of possession, ₹3,36,000/- on account of staircase charges, ₹44,250/- on account of maintenance charges, ₹70,490/- on account of total tax due. 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; and further club member charges have been wrongly charged since there is no operational club at site.

a) 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 and the same is applicable in this case as well.

b) 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 complainants. In present circumstances, the offer of possession was validly communicated to the complainants on 17.11.2023 as per observations recorded in above paragraph. So, the complainants are liable to pay these charges from 17.11.2023.

c) With regard to the demand of ₹40,000/- raised by the respondent on account of club member charges, it is observed that club charges can



only be levied when the club facility is physically located within the project and is fully operational. Complainant has submitted that the proposed club has not been constructed till date. Respondent has not placed any document/photograph to negate the claim of the complainants. Respondent is entitled to charge club member charges only after the club at the site becomes functional and the complainant is able to make use of it. Since at present the club is not there, respondent cannot raise demand on account of club member charges.


24. 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.



25. In nutshell, as per the builder buyer agreement possession of the unit should have been delivered to the complainant on 29.09.2016. However, respondent failed to deliver possession of the unit within stipulated time. As per observations recorded in para 22 of this order a valid offer of possession was duly communicated to the complainant on 17.11.2023. From this date there was no impediment in complainant's taking over of possession of the booked unit. Since, the complainant wishes to continue with the project, therefore, as per Section 18(1) of the Act, the complainant becomes entitled to receive "delay interest" from the deemed date of possession i.e., 29.09.2016 till the date of communication of offer of possession i.e., 17.11.2023. Fact of the matter is that possession of the unit has been inordinately delayed for more than seven years, hence, the complainant is entitled to seek delay interest for the said period. Authority, hereby, concludes that the complainant is entitled for the delay interest from the deemed date i.e., 29.09.2016 till the date on which a legally valid offer of possession i.e., 17.11.2023 is made to the complainant. 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”..”

26. 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., 12.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.90%.



27. 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 12.08.2025 works out to 10.90% (8.90% + 2.00%) from the due date for handing over of possession i.e., 29.09.2016 till 17.11.2023.

28. Authority has got calculated the interest on total paid amount which works out to ₹ 22,94,510/- 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 17.11.2023 (in ₹)
1.	29,48,370/-	29.09.2016	22,94,510/-
Total	29,48,370/-		22,94,510/-

G. DIRECTIONS OF THE AUTHORITY

29. 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, 2016:


- (i) Respondent is directed to pay upfront delay interest of ₹ 22,94,510/- to the complainant towards delay already caused in handing over



the possession. Interest shall be paid as uptill the time as provided under section 2(za) of the RERA Act, 2016.

- (ii) A period of 90 days is given to the respondent 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 shall visit the office of the respondent company within 30 days of uploading of the order and complete the formalities for taking physical possession of the unit.
- (iv) Respondent shall not charge anything from the complainants which is not part of the agreement to sell.

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


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]