



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	413 of 2022
Date of filing:	17.03.2022
First date of hearing:	28.04.2022
Date of decision:	12.08.2025

Nectu W/o Jagbir Singh,  
R/o Village Post Office Morkheri,  
District Rohtak, Haryana-124406

.....COMPLAINANT

NO. 1

Jagbir Singh S/o Jai Narain,  
R/o Village Post Office Morkheri,  
District Rohtak, Haryana-124406

.....COMPLAINANT

NO. 2

VERSUS

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

.....RESPONDENT

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

Member  
Member

**Present: -** Ms Shipra, Proxy counsel for Mr. Manoj Rathee,  
Ld. Counsel for Complainants.  
Mr. Kamaljeet Dahiya, Ld. Counsel for Respondent through VC.

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

1. Present complaint was filed on 17.03.2022 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 complainants, 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.	H-002, Ground Floor, Block H-2, Unit Type-2BHK+2TH, measuring super area of 1250 sq. ft. and built area of 854 sq.ft



5.	Date of Builder/ Apartment Buyer Agreement	06.02.2014
6.	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>
7.	Due date of possession	05.08.2017
8.	Total/Basic sale consideration	₹42,92,500/-
9.	Amount paid by complainants	₹42,18,503/-
10.	Whether occupation certificate received or not.	Received on 17.03.2022
11.	Offer of possession	15.10.2022

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

3. In captioned complaint, complainants had booked an apartment in a project being developed by the respondent namely "Ruhil Residency", situated at Sector-3, Bahadurgarh" in the year 2013. A builder buyer agreement was





executed between the parties on 06.02.2014 and the complainants were allotted apartment bearing no. H-002, Ground Floor, Block H-2, Unit Type-2BHK+2TH in the said project.

4. The total sale consideration of the apartment was fixed as ₹42,92,500/- against which the complainants have paid an amount of ₹48,68,503/- till date.

It is pertinent to mention that the complainants have submitted that they had paid a further amount of ₹6,50,000/- to the respondent in cash, however, the said payment was not reflected in the total paid amount by the respondent despite issuing a receipt in acknowledgment thereof. It is further submitted that the complainants had opted for construction linked payment plan and had adhered to the terms of the agreement. No default was committed by the complainants in making payments of instalments as and when demanded by the respondent.

5. As per clause 9(i) of the agreement, respondent had committed to deliver possession of the unit within 36 months from the date of execution of agreement 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 05.08.2017. However, the respondent failed to deliver possession of the booked apartment within the stipulated period of time. The complainants had requested the respondent for delivery of possession but despite repeated verbal assurances by the respondent that possession would be handed over



shortly, the same has not been delivered to the complainants till date. The complainants had visited the project site on multiple occasions and discovered that the assurances and representations made by the respondent regarding handing over possession by were false and misleading, as there was no significant development at the site.

6. Furthermore, from the date of booking till the filing of the present complaint, the respondent has never intimated the complainants about the existence of any force majeure event or any other circumstance beyond their reasonable control that could have justified the delay in completion of the project. The respondent was bound by the terms and conditions stipulated in the builder buyer agreement and was obligated to deliver possession of the unit within the agreed timeline.
7. Respondent has miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects even after taking payment of entire sale consideration. Therefore, the complainants are left with no other option but to approach this Authority. Hence, the present complaint seeking relief of refund of the amount deposited by the complainants.

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**C. RELIEF SOUGHT**

8. That complainants initially sought following relief(s):-
- i. That respondent may kindly be directed to refund the total amount collected from the complainants.
  - ii. The adequate compensation on account of the misrepresentation and mental harassment may kindly be awarded to the complainants.
  - iii. Any other relief which this Hon'ble Authority may deem fit in view of the present facts and circumstances.
9. During the course of proceedings dated 20.12.2022, learned counsel for the respondent submitted that the project in question is complete in all respect and occupation certificate has also been received on 17.03.2022 by the respondent-promoter. Thereafter, an offer of possession was issued to the complainant on 15.10.2022. Upon receipt of the offer of possession, learned counsel for the complainants submitted that if the project is complete in all aspects, complainants are ready to take possession of the booked unit. In light of these facts, the complainants were directed to amend their prayer clause in respect of taking possession of the unit in question. Pursuant to this, the complainants vide application dated 28.06.2023 had amended the prayer clause in the captioned complaint and sought following relief(s):-
- i. Direction to the respondent to handover the physical possession of the apartment along with interest and compensation due to delay caused





- in delivery of possession after removing all the deficiencies pointed out by the complainants vide email dated 29.01.2023
- ii. Direction to refund the amount collected on account of club charges as there is no club in existence of site.
  - iii. Direction to waive of the amount demanded on account of the GST as the delay is on the part of the respondent and hence the complainants are not liable to pay the GST.
  - iv. Direction to pay interest on the amount of maintenance charges already paid by the complainants as there are no basic amenities even till today.
  - v. Direction to pay adequate compensation on account of the misrepresentation and unfair trade practices by using the inferior quality of material may kindly be awarded to the complainants.
  - vi. It is furthermore respectfully prayed that the respondent may kindly be directed to offer the possession after completing all the basic amenities such as power supply, water connection and etc. and the apartment should be in habitable condition, so that the complainants may reside in the same along with her family and in failure to do so, the respondent may kindly be directed to refund the amount deposited by the complainants in the interest of justice and equity.



Hence, the present complaint is being proceeded for 'relief of possession of the booked unit'.

10. Upon perusal of record, it is observed that the complainants at the time of filing of application dated 28.06.2023 have only amended the relief clause of the complaint, however, the complainants have not changed their pleadings. Further the complainants, in the amended relief clause have alleged that there are deficiencies in the unit in question and respondent be directed to deliver possession after removing the said deficiencies. During the course of adjudication, the complainants have filed several applications to place on record relevant documents to highlight the deficiencies in the project in question. Said applications are briefed as follows, application dated 16.02.2024 for placing on record site visit report of the project in question conducted on 06.11.2023 to showcase the deficiencies in the unit in question; application to place on record a copy of notice dated 16.01.2024 issued by the Haryana Fire and Emergency Services, Bahadurgarh (Jhajjar) to the respondent company highlighting non-compliance with the National Building Code, 2016 and Haryana Building Code, 2017, and directing rectification of several deficiencies, accompanied with photographic evidence; application dated 11.07.2024 for placing on record a copy of letter issued to respondent regarding recommendation by Fire Department for cancellation of Fire NOC of the respondent company





for non-compliance of NIBC, 2016 and Haryana Building Code, 2017 and copy of complaint against officers of the Fire Department for granting Fire NOC and occupation certificate without the completion of additional staircases for emergency fire safety exit; application dated 27.08.2024 filed for placing on record a copy of CM Window Action Taken Report(ATR) dated 01.08.2024, regarding incomplete construction work which was mandatory for second staircase with respect to emergency fire safety; application dated 13.12.2024 filed for placing on record a copy of show cause notice dated 26.11.2024 issued by the Fire and Emergency Services, Haryana to the respondent company; application dated 18.04.2025 filed for placing on record a site visit report pertaining to the visit conducted on 28.12.2024, for submitting a detailed list of deficiencies in the booked unit.

11. During the course of oral submissions/arguments, learned counsel for the complainants reiterated the averments made in the complaint and further submitted that the respondent had issued a letter dated 15.10.2022 to the complainants intimating regarding receipt of occupation certificate and inviting the complainants to take possession of the apartment in question after making payment of remaining dues. Learned counsel further submitted that the respondent had raised a demand of 23,36,000/- vide demand letter dated 15.10.2022 on account of additional cost of staircase charges. However, said charges are not a part of the builder buyer



agreement and the same should be refunded to the complainant. Therefore, the complainants prayed that direction be issued to the respondent to handover possession of the unit along with admissible delay interest.

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

Learned Counsel for respondent filed reply on 05.08.2022, pleading therein:

12. The project in question namely 'Ruhil Residency' being developed at Sector-3, Bahadurgarh, Haryana. consists 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. Further, the construction of the entire project including both the phases has been completed and the respondent received occupation certificate from the concerned department on 17.03.2022.
13. The complainants after making requisite enquiry had applied for booking an apartment in the project of the respondent namely 'The complainants were allotted apartment bearing no. H-002, Block H-2, Ground Floor admeasuring 1250 sq. ft. A builder buyer agreement was executed between the parties on 06.02.2014. As per the agreement possession of the unit was to be handed over within a period of 36 months along with a grace period of 180 days from the execution of the agreement. Thus, the possession of the unit was to be handed over by 05.08.2017. Further, the said deemed date of delivery of



possession was subject to force majeure conditions. The possession of the complainants got delayed because of various factors beyond the control of the respondent.

14. The respondent has submitted that application for grant of occupation certificate was filed 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. Further on account of Covid-19 outbreak construction activities had been suspended in the entire country thus causing delay in handing over of possession.
15. The respondent after completing construction of the project in question and after receipt of occupation certificate on 17.03.2022 had issued an offer of possession to the complainants on 15.10.2022 along with provisional demand letter of even date.
16. During hearing, Id. counsel for respondent stated that occupation certificate was issued by competent Authority on 17.03.2022 and possession of the unit was offered to complainants on 15.10.2022. It was further submitted that subsequent to the offer of possession, the complainants were repeatedly requested to clear the outstanding dues and take physical possession of the unit. However, despite repeated follow-ups, the complainants only visited the





site on 28.12.2022 and pointed out certain deficiencies in the booked apartment alleging that the apartment was not in a habitable condition. The respondent duly rectified the deficiencies as pointed out by the complainants and thereafter sent an email dated 16.12.2023 to the complainants informing about the removal of the deficiencies. The respondent had also filed a detailed reply in the registry of the Authority with regard to removal of deficiencies along with supporting photographs through application dated 13.12.2024, and also issued another provisional demand letter dated 09.12.2024 to the complainants for making payment of remaining dues, however the complainants again failed to make the requisite payment and take possession.

17. Learned counsel for the respondent further submitted that the apartment in question is complete in all respects and all the deficiencies have been removed. The respondent has filed an application dated 26.05.2025 for placing on record recent photographs of the apartment to establish that the deficiencies stand rectified and the apartment is now complete and fit for habitation.

#### **F. ISSUES FOR ADJUDICATION**

18. 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?



19. Whether the complainants are liable to pay maintenance charges, club charges and GST charges?

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

20. After going through rival contentions of both the parties and perusing all the documents available on record, Authority observes that the complainants had booked an apartment bearing no. H-002, Ground Floor, Block H-2, Unit Type-2BHK+2TH in respondent's project, namely "Ruhil Residency", Sector-3, Bahadurgarh" in the year 2013. A builder buyer agreement was executed between the complainants and respondent on 06.02.2014. The total sale consideration of the apartment was fixed as ₹42,92,500/- against which the complainants have paid an amount of ₹48,68,503/- to the respondent in lieu of booked apartment. It has been alleged by the complainants that the respondent has delayed delivery of possession of the booked apartment beyond the stipulated period of time. Even after a lapse of more than 8 years from the proposed deemed date of possession the apartment is not as per the terms agreed between the parties. Hence the present complaint.
21. In this regard it is observed that as per clause 9(i) of the agreement, respondent was under an obligation to hand over possession of the unit by 05.08.2017. Admittedly the delivery of possession of the apartment has been delayed beyond the time period as agreed between the parties. 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. It is considerable to note that the possession of the unit in question became due on 05.08.2017 and that the COVID-19 outbreak hit construction activities post 22.03.2020 i.e more than three years after the lapse of proposed 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 complainants. Therefore, as far as delay in delivery of possession of the 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 05.08.2017, meaning thereby that respondent should have applied and obtained the occupation certificate before 05.08.2017, however, as per record, the respondent had applied for issuance of occupation certificate on 13.01.2020 i.e., after lapse more of the 2 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 a project due to its own account and hence, the claim of the respondent is rejected.

22. As per observations recorded above, possession of the floor in question should have been delivered by 05.08.2017. However, respondent failed to complete construction of the floor and deliver possession within the time period stipulated in the buyer's agreement. Thereafter, an offer of possession was issued to the complainants on 15.10.2022. It is the contention of the respondent that the complainants have failed to accept the offer of possession and further failed to make payment of the due outstanding amount. On the other hand, the complainants have submitted that the said offer of possession was unacceptable to them as there were gross deficiencies in the project and further the respondent had illegally raised a demand of ₹3,36,000/- vide demand letter dated 15.10.2022 on account of additional cost of staircase charges which were not payable by the complainants.

23. In this regard it is observed that admittedly the respondent had issued the offer of possession dated 15.10.2022 after receipt of occupation certificate





dated 17.03.2022. Vide said offer the respondent had duly apprised the complainants with regard to receipt of occupation certificate and further invited the complainants to come forward and take possession. The respondent had also issued a detailed statement of account of payable and receivable amounts. Upon receipt of offer of possession the complainants had visited the site on 06.11.2023 and found several discrepancies in the apartment in question. The complainants have further alleged structural deficiencies in the project in question with regard to non-compliance with fire safety standard as per National Building Code, 2016 and incomplete construction of additional staircase for emergency fire exit. Complainants in support of their averments have annexed a variety of documents, site visit reports and email communication exchanged between the parties with regard to the same. These documents have been perused at length and inferences have been drawn accordingly.

24. It is the principal contention of the complainants that the offer of possession dated 15.10.2022 was invalid in view of the deficiencies which existed in the project till long after the offer of possession was issued to by the respondent. Various correspondences have been exchanged between the parties with regard to the same. However, to resolve the issue with regard to the deficiencies Authority vide order dated 29.03.2023 had appointed a Local Commissioner in the matter for proper adjudication. After conducting





thorough examination of the apartment the Local Commissioner had submitted a report dated 04.07.2023 wherein it was observed that the main issue with the apartment was pertaining to seepage in the walls of the bath room which was a matter of concern and other issues raised by the complainants were of minor nature and could be addressed if the complainants were keen on taking possession. Thereafter, the respondent had sent an email an email dated 16.12.2023 to the complainants wherein it has been mentioned that the deficiencies pointed out by the complainants have been duly addressed. As per record, even thereafter the complainants remained dissatisfied with the respondent's assertions, contending that the alleged rectification does not meet the standards and specifications as contemplated under the builder buyer agreement, and that the apartment continues to be uninhabitable. Subsequently, vide application dated 13.12.2024, the respondent submitted a detailed reply in a tabular form regarding rectification of deficiencies along with recent photographs purporting to show the current status of the unit. Furthermore, through an additional application dated 26.05.2025, the respondent annexed recent photographs of the project site to demonstrate that the apartment is ready as per the terms of agreement between the parties. Notwithstanding the same, the complainants continue to dispute the claim of completion and habitability,



alleging that the deficiencies persist and the unit does not conform to the promised standards under the governing agreement.

25. Now with regard to offer of possession dated 15.10.2022, it is observed that a valid offer of possession is a formal intimation on part of respondent communicating to the complainant that the unit is ready/habitable for possession. It forms the beginning of the process of handing over of possession. A valid offer of possession constitutes intimation regarding status of unit, status of receipt of occupation certificate and balance payables and receivables amount in respect of the unit for which possession has been offered to ensure a smooth hand over of possession of the unit. Authority has further laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:

*"7. At this stage, the Authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end, and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:*

*(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities*






have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii) Thirdly, the offer of possession should not be accompanied by unreasonable additional demands. In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottees. The Authority is of the view that if additional demands are of minor nature, the allottees should accept possession under protest. The disputes in respect of minor amounts, however, can be resolved by this Authority. The offer of possession accompanied with minor additional demands accordingly will be termed legal and justified.





*However, if the offer of possession is accompanied with a huge additional demands beyond the scope of provisions of the agreement, the allottees cannot be forced to accept such an offer. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Huge unreasonable demands itself would make an offer unsustainable in the eyes of law."*

26. Now in this particular instance the alleged offer of possession dated 15.10.2022 is viewed under a lens on three particular instance that is receipt of occupation certificate; deficiencies, if any and demands made along with offer of possession, Authority observes as follows:

Insofar as the issue of the habitability of the booked unit is concerned, the occupation certificate dated 17.03.2022 issued by the Department of Town and Country Planning is placed on record by the respondent and the same has not been revoked by the department despite the reservations and representations of the complainants. Meaning thereby, occupation certificate dated 17.03.2022 is a valid document. The receipt of occupation certificate from a Competent Authority itself substantiates that the unit is in a habitable condition. Additionally, the issue pertaining to the Fire NOC has arisen subsequent to the issuance of the offer of possession. Upon perusal of the records, it is observed that at the time when the respondent issued the offer of possession dated 15.10.2022, the complainants did not raise any grievance concerning fire safety compliance. Even as on date, although the issue of Fire Safety NOC has been raised, there is nothing on record to show that the



competent department has revoked or withdrawn the occupation certificate granted to the respondent company.

Further with regard to the allegation of the complainants that the unit suffered from various structural and workmanship-related deficiencies inter alia including, the non-installation of designer tiles on the walls, the obstruction of more than 50% of the balcony area due to the presence of an incomplete and common additional iron staircase, seepage in master bedroom and both bathrooms etc. The complainants have alleged that, despite repeated representations, the respondent failed to rectify the said defects, thereby breaching its statutory and contractual obligations. Although certain rectifications were allegedly undertaken by the respondent, the complainants remained dissatisfied with the condition of the booked unit and refused to take possession on the ground that the amenities and specifications provided were not in conformity with those promised under the builder buyer agreement. It is, however, observed that the deficiencies highlighted are minor in nature and largely pertain to expectations of aesthetic or subjective satisfaction, rather than substantial deviation from the contractual specifications. In hindsight, there was no hindrance to complainants in taking possession of the unit in question. Nevertheless, in light of the allegations pertaining to defects in workmanship, quality, and the failure of the promoter to fulfil its obligations under the agreement for sale, the complainants are

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entitled to seek relief by way of compensation in terms of the provisions of Section 14(3) and Section 18(3) of the Real Estate (Regulation and Development) Act, 2016. Relevant provision of Section 14(3) of the Act, 2016 is reproduced hereunder:

*“14(3)- In case any structural defect or any other defect in workmanship. Quality, provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be duty of the promoter to rectify such defects without further charge, within thirty days and in event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation the manner as provided under this Act.”*

Relevant provision of Section 18(3) of the Act, 2016 is reproduced hereunder:

*“18(3)- If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”*

Accordingly, in view of the foregoing, the complainants reserve the right to seek compensation under the provisions of Sections 14(3) and 18(3) of the Act, 2016, for the alleged failure of the promoter to rectify the defects and deliver the unit in conformity with the agreed specifications.





27. Now in respect of the demands raised vide provisional demand letter dated 15.10.2022, it is the contention of the complainants that the respondent has illegally raised demand on account of staircase charges, maintenance charges, staircase charges GST charges and Club charges. In this regard it is observed that vide provisional demand letter dated 15.10.2022, respondent had raised a demand of ₹6,87,967/- as outstanding payment which included ₹44,250/- on account of maintenance charges, ₹2,44,750/- on account of total tax due and ₹ 40,000/- on account of Club membership charges. Amongst these, charges raised on account of staircase charges and maintenance charges are being opposed by the complainants as they are not in consonance with the buyer's agreement, further GST charges are not payable since the possession was due on 05.08.2017 and GST came into force in 2017 i.e after the due date of possession therefore, it is to be payable by the respondent and finally Club Member charges have been wrongly charged since there is no operational club at site.

a) With regard to maintenance charges, it is observed that according to clause 1(viii) of the apartment buyer agreement, the complainants 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 15.10.2022 as per observations recorded in above paragraph. So, the complainants are liable to pay these charges from 15.10.2022.

b) With regard to the demand of ₹40,000/- raised by the respondent on account of club membership 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. Complainants have 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 membership charges only after the club at the site becomes functional and the complainants are able to make use of it. Since at present the club is not there, respondent cannot raise demand on account of club membership charges.

c) With respect to GST charges, the complainants have alleged that this charge is not payable since the delay is on the part of the complainants. In this regard it is observed by the Authority that vide provisional demand letter dated 15.10.2022 respondent has raised a demand of ₹2,44,750/- on account of total tax due from the complainants. On perusal of said letter 15.10.2022, the incidence of the said tax amount cannot be inferred. A bifurcation cannot be made as to what particular amount, if any, has been charged on account of GST as the charge is



under the heading of 'Total Tax Due'. complainants in its complaint and throughout pleadings has failed to prove that these charges have indeed been incurred solely on account of GST charges. Therefore, no particular relief can be granted to the complainants.

d) 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.

It is further noteworthy to observed that the captioned complaint has been filed on 17.03.2022 i.e on the same date as that of the receipt of the occupation certificate. Meaning thereby that the unit was in a habitable condition when the complainant had approached this Authority. At that time the complainant had prayed for refund of paid amount along with interest. Thereafter, the complainant was issued an offer of possession on 15.10.2022 after receipt of occupation certificate. However, the complainants chose not to act on the said offer of possession and waited for a further period of time deliberating their options under the

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impression that the meter on delayed possession charges was kept running. It was only on 28.6.2023 that the complainant filed an application for amendment of relief clause. The complainants parallelly raised objections with regard to the habitability of the unit just to prolong the period of delay. In this instance, the complainants cannot be allowed to negatively enrich themselves.

28. In light of the observations recorded in preceding paragraphs, it is observed that the offer of possession dated 15.10.2022 was a valid offer of possession. There was no impediment in complainant having accepted the same. The deficiencies were of minor nature which could have been rectified after taking over of possession. The complainants have prolonged the present litigation seeking as the unit in question is not as per to the terms agreed between the parties for which they are entitled to compensation as observed in para 27 of this order. As far as habitability is concerned, the unit is habitable in all respects. The complainants wish to continue with the project and take possession, therefore, as per Section 18(1) of the Act, the complainants become entitled to receive "delay interest" from the deemed date of possession i.e., 05.08.2017 till the date of valid offer of possession i.e., 15.10.2022 for the delay caused in delivery of possession. 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".."*

29. 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%**.

30. Hence, Authority directs respondent to pay delay interest to the complainants 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., 05.08.2017 till 15.10.2022.
31. Authority has got calculated the interest on total paid amount which works out to ₹35,64,796/- 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 12.08.2025 (in ₹)
1.	38,98,252/-	05.08.2017	34,10,917/-
2.	3,20,251/-	18.03.2021	1,53,879/-
Total	42,18,503/-		35,64,796/-

It is pertinent to mention that the complainants in their complaint file have claimed that they have paid an amount of ₹ 48,68,503/- to the respondent in lieu of booked unit. However, on perusal of file it is revealed that the complainants have not attached proper receipts of total paid amount.

Today during the course of hearing proxy counsel appearing on behalf of





arguing counsel for complainants submitted that the respondent vide offer of possession dated 15.10.2022 has admitted to having received an amount of ₹ 42,18,503/- from the complainants as total paid amount. This amount may be taken as the final paid amount for calculation of interest. Thus, the amount of ₹42,18,503/- is being taken as the total paid amount for the purpose of calculation of interest.

#### **F. DIRECTIONS OF THE AUTHORITY**


32. 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 ₹ 35,64,796/- to the complainants 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 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 shall visit the office of the respondent company within 15 days of uploading of the order and complete the formalities for taking physical possession of the unit.
- (iv) The respondent shall not charge anything from the complainants which is not part of the agreement to sell.
33. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

  
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**CHANDER SHEKHAR**  
[MEMBER]

  
.....  
**DR. GEETA RATHEE SINGH**  
[MEMBER]