



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	298 of 2023
Date of filing:	10.02.2023
First date of hearing:	20.04.2023
Date of decision:	28.10.2025

Anita Sangwan

R/o House no. 795, Sector-1, Rohtak Haryana

....COMPLAINANT

VERSUS

Ms Kashi Promoters Pvt. Ltd.

R/o A-348 , Meera Bagh, Main outer ring road,

New Delhi, 110087

.....RESPONDENT No. 1

Ruhil Promoters Pvt. Ltd.

Khasra no. 28/23, Bhagya vihar

Madanpur Dabas, New Delhi, 110081

.....RESPONDENT No. 2

CORAM: Dr. Geeta Rathee Singh

Member

Present: - Adv. Naveen Single, Ld. counsel for complainant through VC
Adv. Kamal Dahiya, Ld. counsel for Respondents through VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was filed on 10.02.2023 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.	Details of Unit.	Apartment no. C-203, Floor no. 2 nd , Block/Tower no. C0-3
4.	Date of Apartment Buyer Agreement	25.03.2013



5.	Due date of possession	25.09.2016
6.	Possession clause in ABA (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.	Basic sale consideration	Rs. 49,08,792/-
8.	Amount paid by complainant	Rs. 53,65,414/-
9.	Whether occupation certificate received or not.	Received on 17.03.2022
10.	Offer of possession for fit out	29.11.2022

B. FACTS OF THE CASE AS STATED BY THE COMPLAINANT

3. In captioned complaint, complainant had booked an apartment bearing no. C-203, Block C-2 situated at 2nd floor having super area of 1708 sq. ft. in respondent's project "Ruhil Residency" located at Sector-3, Bahadurgarh, Jhajjar, Haryana by paying Rs. 15,18,143/-. Respondent no. 1 issued



receipt no. 1398 dated 18.03.2013 for amount Rs. 15,18,143/-. Allotment letter dated 20.03.2013 was issued to complainant for above said unit.

4. Apartment buyer agreement was executed between complainant and respondent no. 1 on 25.03.2013 for the said unit and according to the said agreement, respondent promised to handover the possession within a period of 36 months from the date of execution of agreement i.e. 25.03.2013 with further grace period of 180 days. Therefore, as per their agreement the possession of the apartment to be handed over by 25.03.2016 (without grace period) and 25.09.2016 (including grace period).
5. Possession of above said flat/apartment was not offered to the complainant within stipulated time. The commitment period of possession including grace period expired however, possession was not offered to the complainant. Hence, delay possession charges become payable from the deemed date i.e. 25.09.2016.
6. Complainant paid the amount of Rs. 4,12,338/- through housing loan from Bank of Baroda to the respondents on 03.07.2019 and respondents received the same on dated 05.07.2019.
7. Respondents offered possession for fit out vide letter dated 18.01.2022 of the above said apartment to the complainant and also requested to clear the



payments/dues or on before 18.02.2022. Thereafter, complainant visited the site and found that the above said apartment was not fully prepared as per agreement and requested the respondents to do necessary compliance as per the agreement.

8. Respondents offered intimation of occupation certificate/offer of possession for fit out to the complainant vide letter dated 29.11.2022. Complainant again visited the site and found that the construction/interior was not in accordance with the agreement dated 25.03.2013 and again requested to the respondents to make necessary compliance in accordance with agreement dated 25.03.2013.
9. Without complying the necessary modifications as per the agreement dated 25.03.2013, respondents issued intimation of occupation certificate/offer of possession for fit out reminder dated 15.12.2022 to complainant upon which complainant met the respondent officials and requested to do the necessary modifications as per the agreement dated 25.03.2013, then thereafter she will clear the dues and take possession. No laminated wooden flooring was found in the bedroom when complainant visited the site, no geyser was found, no fan and exhaust fan was found, no double bowl stainless steel sink was found, no oil bound distempered paint was found, no appealing color combination was found, no granite polish was found, no marble was found



in the lobby area and in addition to that respondents install the staircase in front of the above said apartment and the same was no use and also charged for the same amounting to Rs. 3,00,000/- and the same was not mentioned in the agreement dated 25.03.2013.

10. Complainant approach to the office of respondents numerous time and on 19.01.2023 on the asking of complainant they have issued provisional demand letter wherein respondents show the total cost of unit excluding taxes as Rs.58,00,392/- which is against the agreement dated 25.03.2013 wherein the cost of unit was mentioned as Rs.55,00,392/-and moreover the penalty imposed by the respondents amounting to Rs.2,92,284/- is against the rules as the possession was never offered to the complainant and still the unit was not prepared as per the agreement dated 25.03.2013.

C. RELIEF SOUGHT

Complainant seeks following relief and directions to the respondent:-

- a) This Hon'ble Authority may direct the respondents to pay the possession delay charges from 25.09.2016 to till the actual date of possession.
- b) To direct the respondents to do work as per Annexure C of the agreement dated 25.03.2013 as no laminated wooden flooring was found in the bedroom, no geyser was found, no fan and exhaust fan was found, no double bowl stainless steel sink was found, no oil bound distempered paint was



found, no appealing color combination was found, no granite polish was found, no marble was found in the lobby area.

- c) To direct the respondents to reinstall the iron/steel staircase in front of the above said apartment, as the same was not mentioned in the agreement dated 25.03.2013.
- d) To direct the respondents to remove Rs. 3,00,000/- for the iron/steel staircase added in the flat of cost, as the same was not mentioned in the agreement dated 25.03.2013.
- e) To pay an amount of Rs. 50,000/- (Rupees Fifty Thousand only) as litigation expenses.
- f) Any other or further order of relief, which this Hon'ble Court/Authority may deem fit and proper on the facts and in the circumstances of the case, may also be passed in favour of the Complainants/Buyer.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned Counsel for respondents filed reply on 17.10.2023, pleading therein:

- 11. Complainant had booked one unit in the project of the respondentS namely "Ruhil Residency" situated at Sector-3, Bahadurgarh, Distt. Jhajjar, Haryana. Complainant was allotted apartment no. C-203, floor no. 2 in Block C-2 admeasuring area 1708 sq. ft.



12. Project of the respondents is consisting of two phases i.e. Phase I and Phase II. Phase I includes Tower A, B, C, D, EWS, Commercial shops and Phase II includes Tower E, F, G, H, I, J & Low Rise and Primary School. It is submitted that the construction of the entire project including both the phases has been completed and the occupation certificate has also been issued from the concerned department on 17.03.2022.
13. Complainant stopped making payment against her unit after July 2014, last payment being made on 12.07.2014 and after the lapse of time and continuous requests of the respondent the complainant made payment on 30.03.2016. Respondent requested numerous times to complainant to make the due payment, however complainant had not cleared outstanding dues till date
14. It is submitted that there was delay in construction of the project due to covid-19. Possession was offered to complainant way back in 2022 that is credence from letters dated 18.01.2022, 29.11.2022, 15.12.2022 that are annexed by the complainant herself along with the instant complaint as Annexure C-12, C-13 and C-14. Respondent requested numerous times to complainant to clear outstanding dues and take possession. However, neither the complainant made the payment nor came forward to take possession of the unit in question.



15. Vide offer of possession letter dated 29.11.2022, complainant was duly informed of the receipt of occupation certificate of the project. Possession had been offered after receipt of occupation certificate. Therefore, said offer of possession is legal offer of possession as per provisions of RERA Act of 2016. Complainant refused to take possession without any substantive cause and filed instant complaint on 05.02.2023 i.e. after lapse of approx three months of receipt of offer of possession.

E. ISSUES FOR ADJUDICATION

16. Whether the complainant is entitled to relief of delayed interest in terms of Section 18 of Act of 2016?
17. Whether the complainant is liable to pay staircase charges?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

18. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by complainant and respondents, Authority observes that it is not disputed between parties that complainant had booked an apartment bearing No. C-203, block C-2 situated at 2nd floor having super area of 1708 sq. ft. in respondents's real estate project project "Ruhil Residency" located at Sector-3, Bahadurgarh, Jhajjar, Haryana by paying Rs.15,18,143/-, on 08.03.2013. Allotment letter dated 20.03.2013 was issued to complainant for



said unit. Authority observes that though the agreement for sale was executed between complainant and respondent no.1 i.e. Kashi Promoters Pvt. Ltd. and receipts of amount also issued by respondent no.1 , however offer of possession and other communications were made by respondent no.2.

19. Complainant has alleged that as per clause 9(i) of apartment buyer agreement respondent no.1 had committed 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 25.09.2016 however, possession was not handed over to complainant within stipulated time. Respondents have taken the defence that handing over possession was delayed due to covid 19.

20. On Perusal of clause 9(i) of apartment buyer agreement it is revealed that respondent no.1 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 25.09.2016.

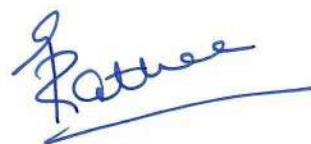
21. With regard to respondent's defence of covid 19 it observed that as per above para possession of the unit in question became due on 25.09.2016 and that the covid-19 outbreak hit construction activities post 22.03.2020 i.e. more than four years after the lapse of due date of possession. The possession 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 unit in question is concerned, respondent cannot be allowed to claim benefit of covid-19 outbreak as a force majeure condition. Further, reliance is placed on judgment 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. ”

In view of the observations made by Hon'ble Delhi High Court this defence of respondents are non sustainable. It is pertinent to highlight here that respondents have already been allowed a grace period of 6 months as per clause 9(i) of apartment buyer agreement. Therefore, no occasion is made out for grant of any further grace period over and above the already considered grace period of 6 months. Hence, possession should have been offered latest by 25.09.2016.

22. Respondents have also taken the defence that complainant had defaulted in making payments. In this regard it is observed that respondent has not placed any document/reminder letter which can show/prove that complainant had defaulted in making payments. Nevertheless, as per receipts attached with complaint file complainant had paid Rs.53,65,414/- till 05.07.2019 against basic sale price of Rs. 49,08,792/-.

23. Authority observes that respondents offered possession for fit out vide letter dated 18.01.202. Admittedly they received occupation certificate on 17.03.2022 meaning thereby that possession for fit out dated 18.01.2022 was not a legally valid offer of possession. However, subsequently respondents offered possession letter dated 29.11.2022 wherein respondent informed the



complainant that it had received occupation certificate on 17.03.2022 and invited complainant to come forward to take the possession after clearing dues. Hence offer of possession dated 29.11.2022 was valid offer of possession. However, complainant did not accept the same on account of alleged illegal demands. It is matter of record that respondent also issued a reminder letter dated 15.12.2022 requesting complainant to accept the possession. Hence, respondent discharged its obligations to offer possession of the unit on 29.11.2022 i.e. after more than 6 years of lapse of due date of possession. Hence, complainant is entitled to delay possession interest from the period 25.09.2016 i.e., deemed date of possession till the date of valid offer of possession i.e. 29.11.2022. 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. 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. 28.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. **10.85%**.
25. Accordingly, Authority directs respondents 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 28.10.2025 works out to **10.85%** (8.85% + 2.00%) from the due date of possession i.e., 25.09.2016 till 29.11.2022.

26. Authority has got calculated the interest on total paid amount which works out to Rs. 34,75,579/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Due date of possession or date of payment whichever is later	Interest Accrued till 29.11.2022.
1.	4953076	25.09.2016	3323100
2.	412338	05.07.2019	152479
	Total principal amount= Rs.53,65,414/-		Total interest= Rs. 34,75,579/-

27. Complainant is also seeking relief of quashing of illegal payment demand of Rs.3,00,000/- for the iron/steel staircase added in the apartment of cost, as the same was not mentioned in the agreement dated 25.03.2013. In this regard, Authority observes that charges raised under 'staircase charges' are for construction of additional staircase for emergency fire safety as per directions by Fire Safety Department. This is a fire escape facility, for the residents 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. Complainant in its complaint has prayed for direction to respondent to rectify deficiencies in infrastructural facilities/services. In this regard Section 18(3) of RERA Act, 2016 provides that if developer fails to discharge any obligation as per agreement executed between parties, developer will be liable to pay compensation to allottee. Relevant clause is reproduced herein:

“(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.”

In view of above observation complainant is at liberty to approach the Adjudicating Officer for seeking the relief of compensation for deficiencies in facilities/services as per apartment for sale.

29. Further, with respect to the prayer of complainant for relief of litigation expenses of Rs. 50,000/- it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "**M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.**" has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as



per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. DIRECTIONS OF THE AUTHORITY

30. 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 complainant amount of Rs. 34,75,579/- as delay interest from the period 25.09.2016 to 29.11.2022.
- (ii) A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
- (iii) Complainant will remain liable to staircase charges to respondent.
- (iv) Respondents shall not charge anything from the complainant which is not part of the agreement to sell.



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

Geeta Rathee

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

