



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarerera.gov.in

Complaint no.:	739 of 2023
Date of filing.:	24.03.2023
First date of hearing.:	09.05.2023
Date of decision.:	23.12.2025

Renu Kapoor
House no. 152 First Floor
Sector 12 RK Puram Near
Moti Bagh Metro Station Delhi

....COMPLAINANT

VERSUS

KLJ Developers Private Limited
KLJ House 8A 5th Floor Shivaji Marg Najaggarh Road
New Delhi

....RESPONDENT

Present: - Ms. Shruti Sharma, Learned Counsel for the Complainant through VC
Ms. Ankita Saikia, Proxy counsel for Mr. Venkat Rao, Learned Counsels for the Respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed 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

A handwritten signature in black ink, which appears to read "Dr. Geeta Rathee Singh".

or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil 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 the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	KLJ Greens
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Un-registered
4.	Details of the unit.	Flat No 1204 on 12 th Floor, Tower A7
5.	Date of Allotment	12.06.2008
6.	Date of plot buyer agreement	14.06.2008
7.	Possession clause	As per clause 4.1 "That subject to Clause 17 and subject to Buyer having complied with all terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all the provisions, formalities ,documentation etc., as prescribed by the Developer ,whether under this Agreement or otherwise



		from time to time and the Developer having received the full cost of the Flat as per Schedule of Payment annexed hereto together with interest due ,if any, and other charges due /demanded and payable upto the date of possession including Stamp Duty ,Registration ,Documentation and Mutation Charges as applicable from time to time and all other incidental and legal expenses for execution and registration of Sale Deed and mutation of said Flat, the Developer /confirming Party shall endeavour to hand over the possession of the said Flat to the Buyer within a period of 36 months from date of sanction of the building plans of said colony .The buyer agrees and understands that the Developer shall be entitled to a grace period of 180 days, after the expiry of 36 months ,for applying and obtaining the occupation /completion certificate in respect of said colony from the concerned authority .The Developer shall give Notice of Possession to the buyer with regard to handing over the possession and in the event buyer fails to accept and take the possession of said Flat within 30 days, the Buyer shall deemed to be custodian of the said flat from the date indicated in the notice of possession and said flat remain at the risk and cost of buyer.
8.	Date of sanction of building plans	01.02.2008
9.	Due date of possession	01.02.2011
10.	Basic sale consideration	₹ 19,18,500/-



11.	Amount paid by complainant	₹22,76,460
12.	Offer of possession.	21.04.2017

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. A flat had been booked in the project of the respondent namely, "KLJ Greens" situated in Sector 77, Faridabad, Haryana on 14.06.2008 by paying a booking amount of ₹ 6,70,065/- by one original allottee namely Mr Rajiv Mehta. Vide allotment letter dated 14.06.2008 flat no 1204 on 12th Floor Tower A7 having super area of 1279 sq. ft was allotted to the original allottee. A copy of the allotment letter dated 14.06.2008 is annexed as Annexure C1.
4. It is submitted that a flat buyer agreement was duly executed between the original allottee and the respondent company on 14.06.2008 in respect of booked unit. Thereafter the original allottee could not continue with the project in question and sold the booking rights qua the same to the present complainant in the year 2010. The flat was successfully endorsed in favour of the complainant vide Transfer Letter dated 09.11.2010 issued by the respondent company.
5. It is also submitted that as per clause 4.1 of flat buyer's agreement dated 14.06.2008, the respondent company was liable to deliver possession of the



booked unit within a period of 36 months from date of sanction of building plans of the project. The respondent company was further granted a period of six months for applying for occupation certificate. The date of sanction of the building plans of the said project was 01.02.2008. Therefore, the due date of delivery of possession is calculated as 01.02.2011.

6. That the basic sale consideration of the flat was fixed as ₹ 19,18,500/- against which the complainant has paid an amount of ₹ 22,76,460/- to the respondent till date.
7. It is submitted that the respondent failed to deliver possession of the booked flat within stipulated time. That an offer of possession was issued to the complainant only on 21.04.2017, after an inordinate delay of more than 6 years without payment of accrued delayed possession charges. The copy of offer of possession is annexed as **Annexure C-6**.
8. Further, the respondent company had unlawfully and arbitrarily increased the super area of the booked flat from 1279 sq. ft. to 1387 sq ft. without the consent of the complainant. Respondent company had also enhanced EDC charges from agreed rate of ₹150 sq. ft. to ₹360 sq.ft. vide letter dated 20.12.2011 which was later reduced to ₹295 sq. ft. vide letter dated 20.05.2013.



9. It is submitted that the construction quality of the project in question is also very poor in nature and not as per specifications and features promised in flat buyer agreement dated 14.06.2008. Instead of rectifying the quality of the flat, the respondent rather issued a cancellation notice dated 23.12.2022 to the complainant on account of non payment of dues. Further the respondent had neither returned the amount paid by the complainant towards the booked flat after the alleged cancellation. The copy cancellation letter has been annexed as **Annexure C-7.**

10. That the inordinate delay on part of the Respondent in delivering the possession amounts to violation of provisions of Real estate (Regulation and Development)Act,2016. That as per Section 18 and 19 of the Act, the respondent is liable to refund the entire amount along with interest to the allottees of an apartment ,building or project for a delay or failure in handing of such possession as per terms of agreement of sale . The complaint is therefore entitled for the refund of the amount paid.

C. RELIEF SOUGHT

11. In view of the facts mentioned above, the complainants pray for the following reliefs):-

- i. To direct the respondent company to refund the principal amount of ₹22,76,460/- along with interest at the prescribed rate from date of payment to date of refund.

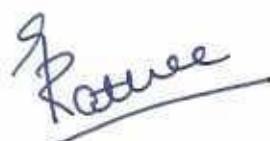


- ii. To restrain the respondent company from creating third party rights in respect of booked unit number 1204, 12th Floor , Tower A7 and direct the respondent to maintain status quo till date of refund.
 - iii. Any to pass such other orders as this Hon'ble Authority may deem fit and proper.
12. During the course of hearing learned counsel for the complainant reiterated submissions as recorded above. She further submitted that in the order dated 28.10.2025 there was a typographical error wherein the date of transfer has been wrongly mentioned as 09.11.2020 instead of 09.11.2010.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed a detailed reply on 18.10.2023 pleading therein:

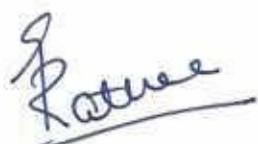
13. The complainant throughout the complaint has misrepresented to the Ld. Authority and concealed the material facts that the complainant had previously filed a Consumer Complaint bearing No. 619 of 2015 titled as "Renu Kapoor Vs. KLJ Developers Pvt. Ltd." before the Ld. State Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the "Ld. SCDRC") seeking refund of the paid amount along with other baseless reliefs. A copy of the Consumer Complaint is annexed herewith and marked as Annexure R/2.



14. That during the pendency of the aforementioned Consumer Complaint before the Ld. SCDRC the complainant had withdrawn the aforementioned Consumer Complaint. The Ld. SCDRC without granting liberty to the complainant herein to file a complaint on the same cause of action before any other forum/courts/authorities/courts, allowed the withdrawal of the Consumer Complaint filed by the complainant herein. A copy of the Order dated 12.12.2022 of the Ld. SCDRC is annexed herewith and marked as Annexure R/3.

15. That the present complainant is a subsequent allottee of the unit in question, which was originally booked by Mr. Rajiv Mehta and an allotment letter dated 14.06.2008 was issued in favour of the original allottee and thereafter a Flat Buyer's Agreement dated 14.06.2008 containing mutually agreed terms and conditions with respect to the allotment of the unit in question was executed between the original allottee and the respondent. A copy of the Allotment Letter dated 14.06.2008 is annexed herewith and marked as Annexure R/4. A copy of the FBA dated 14.06.2008 is annexed herewith and marked as Annexure R/5.

16. The original allottee and the present complainant had submitted a joint application for transfer of allotment of the original allottee in favour of the present complainant. That the respondent after considering the said application, transferred the allotment/rights and liabilities of the original

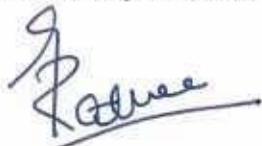


allottee in favor of the present complainant. Accordingly, a Confirmation Letter dated 09.11.2010 was issued by the respondent. A copy of the joint application for endorsement of the unit in question is annexed herewith and marked as annexure R/6. A copy of the Confirmation Letter dated 09.11.2010 is annexed herewith and marked as Annexure R/7.

17. That the complainant after conducting her inquiry and being completely satisfied with the competency and capability of the respondent in completing the project, and after understanding the terms and conditions of the allotment and flat buyer agreement, agreeing to abide by the terms and conditions of the agreement and the allotment had proceeded to get the unit in question endorsed in her favour.

18. As per clause 4.1 of the agreement, the possession of the unit was to be handed over within a period of 36 months + 180 days (grace period) from the date of sanction of the building plans. Under the said clause it was also agreed that the said time period was subject to force majeure circumstances (mentioned in Clause 17 of the agreement) and stern compliance of the terms and conditions by the allottee.

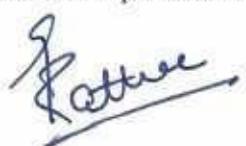
19. That since the unit was endorsed in favour of the complainant on 09.11.2010, reliance may be placed on the judgment of the Hon'ble Apex Court in the matter of "**M/s Laureate Buildwell Pvt. Ltd. Vs. Charanjeet Singh**" [Civil Appeal No. 7042 of 2019]. In the said matter the subsequent allottee claimed



a refund along with the interest from the respective dates when the instalments were paid to the Laureate, which included the instalments paid by the original allottee. The Hon'ble Apex Court after hearing the contention of both parties directed refund of the principal amount with interest from the date when the builder acquired the knowledge or acknowledged the transfer of the unit to the subsequent allottee.

20. Accordingly, applying the ratio of the supra case in the present matter it may be said that all rights and liabilities, including receipt of any sort of interest, by the complainant with respect to the unit will accrue only from the date the transfer came into the knowledge of the respondent. Therefore, the unit was to be delivered to the complainant within a period of 36 months + 180 days grace period from the date of endorsement of the unit, which was further subject to force majeure situations. Thus, the unit was to be delivered to the complainants on or before 09.04.2014.

21. Respondent being a responsible developer had sent a letter dated 26.10.2015 and offered an opportunity to the complainant to exchange the unit in question with the other flat which was ready for immediate possession. That the complainant was also provided with an opportunity to select the new unit as per her choice. However, it is pertinent to note herein that the complainant did not come forward to select the new unit and take possession of the same.



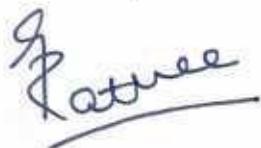
A copy of the Letter dated 26.10.2015 is annexed herewith and marked as Annexure R/8.

22. It is most humbly submitted that the original allottee was allotted Flat No. 1204, admeasuring super area of 1279 sq. ft. and it was agreed that the said area was only tentative and subject to change till the grant of Occupation/Completion Certificate from the concerned authority. That the same is mentioned in the Allotment Letter and the FBA.

23. It is noted herein that on completion of the construction of the unit in question the area of the unit was increased to 1387 sq. ft. (addition of 108 sq. ft.). It is important to bring it to the knowledge of the Ld. Authority that the permissible limit in variation of the sale area as per the FBA was 10%. However, the variation in the Sale Area of the Unit of the Complainant is merely 8.4%.

24. That it was agreed between the original allottee and the respondent that the actual area of the unit would be determined after the completion of the construction. After agreeing to the same understanding as recorded in Clause 1.2 of the agreement, the unit was endorsed in favor of the present complainant. Clause 1.2 of the FBA is reproduced herein below:

"1.2- It is made clear that the Super Area of the said Flat as stated in clause 1.1 herein above, is tentative and subject to change and it shall be determined after completion of



construction of said Colony and after accounting for changes, if any, on the date of possession, the final and confirmed areas shall be incorporated in the Sale Deed.

25. It is most humbly submitted that it was agreed between the complainant and the respondent that the sale consideration of the unit was subject to revision. That the same is specifically mentioned in Annexure III (Schedule of Payment) of the agreement meaning thereby, it was agreed that any increase in cost of construction due to an increase in the cost of inputs shall be borne out by the present Complainant

26. That the EDC/IDC charges initially demanded by the respondent were paid by the original allottee in instalments. Subsequently, when the Government of Haryana increased the rates of EDC, proportionate charges were demanded from the allottees of the Project including the present complainant. That the respondent duly informed the complainant about the increase in EDC charges by the Government of Haryana vide Letter dated 20.12.2011. Furthermore, it was also informed to the complainant that the enhanced EDC rates are subject to further enhancement as the Government of Haryana has reserved its rights to enhance the same further, if it deems necessary. A copy of the Letter dated 20.12.2011 is annexed herewith and marked as Annexure R/10.

27. It is noted herein that pursuant to reworking of the EDC/IDC rates based on the enhancement done by the Government of Haryana and subsequent discussion by the respondent with the concerned authorities, the applicable

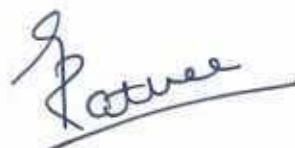


EDC/IDC rates were reduced by the respondent and the same was informed to the complainant vide Letter dated 20.05.2013. A copy of Letter dated 20.05.2013 is annexed herewith and marked as Annexure R/11

28. It is important to bring it to the knowledge of the Ld. Authority that the complainant herein with a mala fide intention of misleading the Ld. Authority and gaining illegitimate monetary benefits, failed to disclose the fact that under the cover letter of 27.07.2013, an amount of Rs. 83,135/- was refunded to the complainant on account of reduced EDC/IDC. A copy of Letter dated 27.07.2013 along with a copy of Cheque amounting to Rs. 83,135/- is annexed herewith and marked as Annexure R/12. Copies of CA Certificates are annexed herewith as Annexure R/12-A (Colly.)

29. It is humbly submitted that the respondent since the inception of the project was committed towards the timely completion. That due to some force majeure situations beyond the control of the respondent the construction of the project was hampered. The respondent, despite facing unforeseen force majeure situations completed the construction of the project and made an application for issuance of the Occupation Certificate dated 20.10.2015 before the Competent Authority.

30. The Respondent had completed the construction of the concerned Unit and applied for grant of the occupation certificate on 20.10.2015. The occupation certificate for the unit of the complainant was granted by the competent

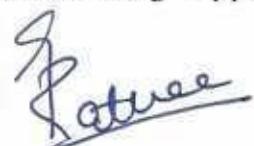


authority on 28.12.2016 i.e. prior to the coming into force of the Real Estate (Regulation & Development) Act, 2016. The Respondent had also offered possession of the said unit to the complainant on 21.04.2017 i.e. immediately after receiving the occupation certificate.

31. However, it is pertinent to note herein that despite receiving the Offer of Possession Letter dated 21.04.2017, the complainant never came forward to take possession of the unit nor have completed the requisite formalities to execute the Conveyance Deed. A copy of Offer of Possession Letter dated 21.04.2017 is annexed herewith and marked as Annexure R/14.

32. Complainant violated section 19(10) of the Real Estate (Regulation & Development) Act, 2016: It is most humbly submitted that as per Section 19 (10) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred to as the "RERA Act, 2016") the Complainant were under obligation to take the possession of the unit after issuance of occupancy certificate for the Unit in question. However, the complainant failed to fulfil that obligation and thus liable for the breach committed.

33. It is most humbly submitted that as per the mutually agreed payment plan, the complainant was obligated to pay balance amount of BSP, IFMS and other charges at the time of Possession. That the Respondent at the time of offering possession, had sent the Statement of Accounts to the complainant requesting her to clear the balance sale consideration amounting approximately



Rs.11,11,719/- . However, the complainant despite being completely aware that the possession of the said unit was subject to timely payment of the instalments due towards the total sale consideration of the unit, failed to pay a single penny towards the total sale consideration of the Unit. The total sale consideration of the unit was Rs.33,72,191/-, that against the said total sale consideration of the complainant had paid only Rs.22,60,472/- . That as of 21.04.2017, there exists vast outstanding amounts to the tune of Rs.11,11,719/- stand due and payable on part of the Complainant

34. That the respondent being a responsible developer had made numerous requests to the complainant to take physical possession of the Unit subject to payment of outstanding dues, however, the complainant paid no heed to the requests of the Respondent. Therefore, the respondent was constrained to send a Reminder and Final Notice dated 12.12.2022 for clearance of outstanding dues. A copy of Reminder and Final Notice dated 12.12.2022 is annexed herewith and marked as Annexure R/16.

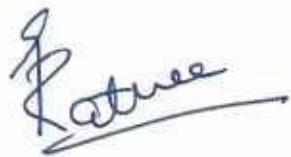
35. However, as the complainant has failed to make the due payment even after receiving Reminder and Final Notice and thus, has violated the provisions of Section 19 of the RERA Act, 2016. Therefore, the Respondent was left with no other option but to exercise the rights granted to the Respondent under FBA and RERA Act, 2016 and canceled/terminated the Allotment of the Complainant vide Cancellation Letter dated 23.12.2022.



36. That it was specifically agreed by the complainant that an amount equivalent to 15% of the Basic Sale Price of the Flat shall constitute Earnest Money and in case of breach of terms and conditions of the agreement, the agreement was to be cancelled after deduction of Earnest Money. That the same has duly been recorded in Clause 1.11 of the FBA.

37. It is important to bring it to the knowledge of the Ld. Authority that though the Respondent was entitled to deduct 15% of the Basic Sale Price as earnest money, however as a gesture of goodwill, the Respondent offered to refund the total amount paid by the Complainant i.e., Rs. 22,60,472/-, That the Respondent had duly sent a Letter dated 18.04.2023 along with a Cheque bearing no. 003426 dated 17.04.2023 to the complainant. However, till date the complainant has not encashed the said cheque. A copy of Letter dated 18.04.2023 along with copy of cheque bearing no. 003426 dated 17.04.2023 is annexed herewith and marked as Annexure R/18.

38. That the construction of the project was hampered due to force majeure situations beyond the control of the respondent. That in Clause 17 of the FBA the Complainant agreed that in case of Force Majeure situations beyond the control of the Respondent, the completion date shall automatically extend. That some of the Force Majeure situations faced by the Respondent which affected or led to stoppage of the work for brief amount of time is being reiterated herein for the sake of clarity:

A handwritten signature in black ink, appearing to read "Rakesh", is positioned at the bottom right of the page. The signature is written in a cursive style with a horizontal line extending from the end of the name.

a. Stay imposed by Hon'ble High Court of Punjab and Haryana: It is important to bring it to the knowledge of the Ld. Authority that the due to some land related disputes, the Hon'ble High Court of Punjab and Haryana in Civil Writ Petition titled as Bhim Singh & Anr. vs State of Haryana & Ors., where the Respondent was also a party to the said Writ Petition, imposed stay on the operation of License, and restrained the Respondent herein from commencing/undertaking any activity on the Licensed Land. That due to the Stay imposed by the Hon'ble High Court, the Respondent was constrained to stop construction activity on project site, which hampered the construction of the Project.

b. Inaccessibility to Project Site: It is important to bring it to the knowledge of the Ld. Authority that due to lack of poor infrastructure around the Project site and improper roads the Respondent and the construction company faced huge trouble in transporting construction materials to the Project site, which

A handwritten signature in black ink, appearing to read "G. Patwari".

severely impacted the construction activity at the Project site.

c. Labour Shortage due to Commonwealth Games: It is important to noted herein that the Commonwealth games were organized in Delhi in October 2010. Due to this Mega event, construction of several real projects including the construction of common wealth games village took place in 2009 and onwards in Delhi and NCR region. This led to an extreme shortage of labour in the NCR region as most of the labour force got employed in said projects required for commonwealth games.

d. Shortage of Labour due to various Social Scheme: It is also to be noted herein that due to active schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru national Urban Renewal Mission (JNNURM), there was a sudden shortage of labour/workforce in the real estate market as the available labour workforce preferred to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and



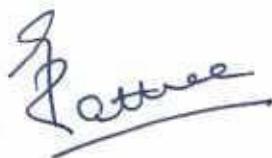
JNNURM schemes. This created a further shortage of labour force in the NCR region.

- c. NGT Order: The Respondent stopped its development activities in compliance with the National Green Tribunal (NGT) order to stop construction in April, 2015 due to emission of dust. The NGT orders simply ordered to stop the construction activities as the pollution levels were unprecedented took time of a month or
- f. Non-payment of instalments by allottees: It is noted herein that several other allottees were in default of the agreed payment plan, and the payment of construction-linked instalments was delayed or not made, resulting in badly impacting and hampering the implementation of the entire project.
- g. Jat Reservation Agitation: The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent are situated for 8-10 days

A handwritten signature in black ink, appearing to read "Rathee", is placed here.

- h. Delay By The Competent Authority In Granting The
- i. Occupation Certificate: It is submitted that the Respondent
- j. since the inception of the project was committed towards the timely completion of the project. That due to some force majeure situation beyond the control of the Respondent the project got slightly delayed. That the Respondent despite facing unforeseen force majeure situations completed the construction of the project and made an application for issuance of Occupancy Certificate dated 20.10.2015 before the Competent Authority. That the Competent Authority had granted the Occupation Certificate only on 28.12.2016.

39. It is clear from the aforementioned submissions that the construction of the project was hampered due to Force Majeure situations beyond the control of the Respondent. It is to be noted that the representatives of the Respondent duly apprised the Complainant in one of their visits to project site about the difficulties being faced by the Respondent in completing the construction of the project due to aforementioned force majeure situations and also offered



alternate unit to the Complainant, however, the Complainant failed to come forward to take possession of alternate unit.

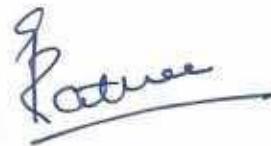
40. During the course of arguments, proxy counsel for the respondent reiterated the submissions as already made above which are not being reiterated for the sake of brevity. She further submitted that in the order dated 28.10.2025 the presence of the counsel for respondent had been wrongly marked as Mr. Dinesh Chauhan and Mr. Yuvraj Chauhan, instead of Ms. Gunjan Kumar, proxy counsel for Mr. Venkat Rao.

E. ISSUES FOR ADJUDICATION

41. Whether the complainant is entitled to relief of refund of the paid amount along with interest in terms of Section 18 of Act of 2016?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

42. After going through rival contentions of both parties and perusing documents placed on record, it is observed that in the captioned complaint a unit had been booked in the project of the respondent namely 'KLJ Greens' situated in Sector 77, Faridabad, Haryana by original allottee namely Mr Rajiv Mehta on 14.06.2008. The original allottee was allotted flat no 1204 on 12th Floor Tower A7 having super area of 1279 sq. ft vide allotment letter dated 14.06.2008. A flat buyer agreement was duly executed between the original allottee and the respondent company on 14.06.2008 in respect of booked unit.



The basic sale consideration of the unit was fixed as ₹ 19,18,500/-.

Thereafter, the original allottee was unable to continue with the allotment of the flat in question and thus sold the booking rights qua the same to the present complainant in the year 2010. The flat was successfully endorsed in favour of the complainant by the respondent vide transfer letter dated 09.11.2010. As per clause 4.1 of agreement dated, the respondent was liable to deliver possession of the booked unit within a period of 36 months from date of sanction of building plans of the project. The respondent company was further granted a period of six months for applying for occupation certificate. The date of sanction of the building plans of the said project was 01.02.2008. Thus, the possession of the unit should have been delivered by 01.02.2011. It is the contention of the complainant that the respondent had failed to deliver possession of the unit in question within time period stipulated in the agreement and thus the complainant has filed present complaint seeking refund of the amount paid by the complainant in lieu of booked unit for inordinate delay in delivery of possession.

43. Admittedly, as per clause 4.1 of the flat buyer agreement dated 14.06.2008, the possession of the unit should have been delivered by 01.02.2011. However, it is primary contention of the respondent that since the unit was endorsed in favour of the complainant on 09.11.2010, all rights and liabilities, including receipt of any sort of interest, by the complainant with respect to the unit will accrue only from the date the transfer came into the knowledge



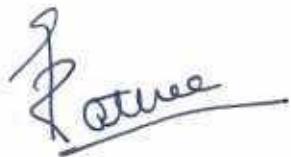
of the respondent. Therefore, the unit was to be delivered to the complainant within a period of 36 months + 180 days grace period from the date of endorsement of the unit, which was further subject to force majeure situations. Thus, the unit was to be delivered to the complainants on or before 09.04.2014.

In this regard, it is observed that the complainant in the present complaint had entered into the shoes of the original allottee on 09.11.2010, i.e prior to the expiry of the proposed due date of possession(being 01.02.2011). No fresh agreement was executed between the complainant and the respondent. The complainant/subsequent allottee had been acknowledged as an allottee by the respondent vide transfer letter dated 09.11.2010. The Authority has perused the transfer letter where the respondent has confirmed the transfer of allotment in favour of subsequent allottee, Ms. Renu Kapoor and the instalments paid by the original allottee, were adjusted in the name of the subsequent allottee and the next instalments were payable/due as per the original allotment letter. Similarly, we have also perused the flat buyer agreement which was originally entered into between the original allottee, and the respondent. The same agreement has been endorsed in favour of Ms Renu Kapoor, subsequent allottee and the present complainant. All the terms of agreement remain the same so it is quite clear that the subsequent allottee has stepped into the shoes of the original allottee for all intents and purposes.

A handwritten signature in black ink, appearing to read "Renu Kapoor".

The present complainant had entered into the project of the respondent with a hope that the respondent shall abide by the terms of the agreement as the same was agreed between the parties. At that juncture, the subsequent purchaser cannot be expected to have knowledge, by any stretch of imagination, that the project will be delayed, and the possession would not be handed over within the stipulated period. The authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, said allottee shall acquire the same rights and liabilities at par with the original allottee. The subsequent allottee, the complainant in this case, enters into the shoes of the original allottee for all intents and purposes and shall be bound by all the terms and conditions contained in the flat buyer's agreement including the rights and liabilities of the original allottee. Thus, as per the agreement the possession of the unit should have been delivered to the present complainant by 01.02.2011.

Learned counsel for the respondent has placed reliance on the judgement of the Hon'ble Supreme Court titled as "M/s Laureate Buildwell Pvt Ltd vs Charanjeet Singh" in which it is observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. Authority observes that the findings made by the Hon'ble Supreme Court in the Laureate judgement are applicable in cases



where the builder buyer agreement was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the deemed date of possession but before RERA Act 2016 coming and as such the statutory right to seek delayed possession interest had not accrued in favour of the original allottee. The plea of the learned counsel for the respondent does not hold weight in present complaint since the unit has been transferred in the name of the complainant prior to the expiry of the due date of possession.

Clause 4.1 of the agreement further provides a grace period of six months to the respondent to apply for occupation certificate. As per facts, the respondent had failed to complete the construction of the project and apply for occupation certificate within stipulated time. It is the respondent who has failed to fulfill its obligation and thus caused the delay. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

It is further observed that the instalments have been duly paid in respect of the unit in question to the respondent and the respondent is retaining the said amount since then, irrespective of the fact as to who has made the said payment of instalments.

44. As observed, the possession of the unit in question should have been delivered to the complainant by 01.02.2011. However, the respondent failed

to deliver possession within stipulated time. Rather, the respondent had issued an offer of possession to the complainant on 21.04.2017 after receipt of occupation certificate on 28.12.2016. It is the contention of the respondent that despite issuing a valid offer of possession, the complainant failed to come forward and accept the possession upon making payment of outstanding dues. The respondent had duly made several requests to the complainant to take physical possession however, the complainant paid no heed. Constrained the respondent had cancelled the allotment of the complainant vide cancellation letter dated 23.12.2022. Thereafter, the respondent had sent a cheque to the complainant amount to ₹22,60,472/-, which is the total amount paid in lieu of the booked unit vide letter dated 18.04.2023. Though the complainant did not encash the said cheque.

On the other hand, it is the submission of the complainant that the offer of possession dated 21.04.2017 had been issued only after an inordinate delay of more than 6 years without payment of accrued delayed possession charges. Further, the respondent had unlawfully and arbitrarily increased the super area of the booked flat from 1279 sq. ft. to 1387 sq ft. without the consent of the complainant. Also the construction quality of the project in question was poor in nature and not as per the terms agreed between the parties. The complainant could not have accepted the said offer of possession. The complainant had further alleged that the respondent company had also



enhanced EDC charges from agreed rate of ₹150 sq. ft. to ₹360 sq.ft. vide letter dated 20.12.2011 which was later reduced to ₹295 sq. ft. vide letter dated 20.05.2013. Instead of addressing the grievances of the complainant, the respondent had arbitrarily cancelled the allotment of the complainant.

45. After hearing rival contentions of both parties and perusing documents placed on record, it is observed that the offer of possession dated 21.04.2017 had been issued by the respondent after receipt of occupation certificate dated 28.12.2016 from the competent department. Though the complainant in her complaint has alleged that the construction of the project was of poor quality however, the complainant has failed to support her allegations along with documentary proof. Receipt of occupation certificate from a competent department itself certifies that the unit in question was in a habitable condition, thus there was no impediment in complainant having accepted the possession. Further, with regard to the increase in super area, it is observed that at the time of allotment, the super area of 1279 sq. ft. of the unit in question was only tentative and subject to change. As per clause 1.1 and 1.2 of the agreement, the complainant had agreed that the said area was subject to change and further agreed that for any variation upto 10% (increase or decrease) the said cost shall be payable or refunded. After the completion of construction, the area of the unit was increased to 1387 sq. ft. (addition of 108 sq. ft. / variation of 8.4%). Said increase was within the permissible limit



of 10% which was already agreed between the parties. Thus, the complainant should have had no objection in accepting the said offer of possession dated 21.04.2017. Further, with regard to disagreement of the complainant qua the EDC charges, it is observed that the said charges were subject to the policies of the Government of Haryana and any changes, were communicated by the respondent to the complainant diligently. Any increase in said charges cannot be a ground for the complainant to not accept possession of a completed flat.

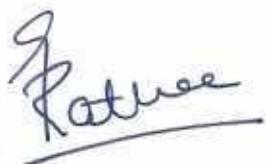
Thus, it is observed that the respondent after completing the construction of the unit had issued a valid offer of possession to the complainant on 21.04.2017 and receipt of occupation certificate on 28.12.2016. There was no impediment in the complainant having accepted the said offer of possession. However, this does not change the fact that the complainant had been exercising her right to seek refund of the paid amount since the year 2015 when the respondent had first expressed its inability to offer possession to the complainant. Since then the complainant had been before the Hon'ble Consumer Forum and had later withdrawn the case to file it suitably before the Authority. By that time the respondent had already delayed delivery of possession by a period beyond 4 years and the complainant did not wish to continue with the project. Complainant in this case does not wish to continue with the project on account of inordinate delay caused in delivery of

A handwritten signature in black ink, appearing to read "Rathee", is positioned in the bottom right corner of the page.

possession and is hence seeking refund of paid amount along with interest as per RERD Act 2016.

Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" in CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, the allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer; the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



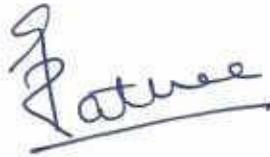
The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

46. As per observations made in preceding paragraph, the complainant has filed present complaint seeking refund of the entire paid amount along with interest on account of inordinate delay caused in delivery of possession. Since, the complainant does not wish to continue with the present unit, the complainant is entitled to receive a refund of the paid amount along with interest. Though, the respondent had issued a cheque dated 17.04.2023 to the complainant for the total paid amount of ₹ 22,60,472/-. However, the said cheque was not cashed by the complainant and the amount is still being retained by the respondent. Keeping in light these facts, the Authority observes that the complainant is entitled to receive refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. 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"

47. Hence, Authority directs respondent to refund to the complainant the paid amount along with interest 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 as on date works out to 10.80% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount.



48. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 23.12.2025) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 23.12.2025 (in ₹)
1.	13592	18.11.2010	22385
2.	670065	12.02.2008	1293684
3.	271918	28.06.2008	513965
4.	189932	04.10.2008	353492
5.	157955	27.05.2009	282995
6.	169006	29.08.2009	298093
7.	134006	18.12.2009	231959
8.	447468	17.07.2010	746612
9.	94007	17.07.2010	156853
Calculation of interest on last instalment of 268590 as per the break up period is herein below			
10.	268590	21.03.2012(till 23.11.2013)	48717
11.	185455	24.11.2013(till 31.12.2014)	22114
12.	112523	01.01.2015(till date of order i.e 23.12.2025)	133511
Total:			41,04,380/-
Total payable to complainant(24,16,539+ 41,04,380) = 65,20,919/-			



The complainant in the captioned complaint has claimed to have paid an amount of ₹ 24,32,527/-, which is conclusive with the receipts annexed. However, out of the last instalment of ₹ 2,68,590/- (charged on account of additional EDC/IDC) the respondent had refunded an amount of ₹ 83,135/- on 23.11.2013 and ₹ 72,932/- on 31.12.2014. Therefore, the amount of interest to be calculated on last payment of ₹ 2,68,590/- is calculated initially upto 23.11.2013; thereafter remaining amount of ₹ 1,85,455 till 31.12.2014 and then for the remaining amount of ₹ 1,12, 523/- from 01.01.2015 till date of order i.e 23.12.2025. Further, the respondent had charged an amount of ₹ 15,988/- on account of transfer charges for substitution of name, as it is administrative charge, no interest is being granted on the same. Therefore, the interest is being calculated on total paid amount of ₹ 24,16,539/-.

F. DIRECTIONS OF THE AUTHORITY

49. 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 refund the entire amounts along with interest of @ 10.80% ₹ 65,20,919/- to the complainant as specified in para 48 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.



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.

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

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