



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	2876 of 2022
Date of filing:	04.11.2022
First date of hearing:	17.01.2023
Date of decision:	23.12.2025

Mrs. Kailash Devi

House no.99,Sector-10A Opposite Huda Market,
Near Hero Honda Chowk,Gurugram-122001, HaryanaCOMPLAINANT

VERSUS

M/s Movish Realtech Pvt. Ltd.

earlier known as Aashiana Realtech Pvt. Ltd.
203-205,progressive chamber d-3 block,
Commercial complex,prashant vihar ,
New delhi-110085

....RESPONDENT

Complaint no:	2880 of 2022
Date of filing:	04.11.2022
First date of hearing:	17.01.2023
Date of decision:	23.12.2025

Mrs. Resham Yadav

VPO Nathupur,near U-59 Road DLF Phase III ,
Gurgaon 122001COMPLAINANT

VERSUS

M/s Movish Realtech Pvt. Ltd.
earlier known as Aashiana Realtech Pvt. Ltd.
203-205,progressive chamber d-3 block,
Commercial complex,prashant vihar ,
New delhi-110085

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh **Member**

Present: - Adv. Rahul Aggarwal, Ld. Counsel for the Complainants through
VC. in both complaints

Adv. Navneet, Adv. Kamal Dahiya Ld. Counsels for the Respondent
through VC. in both complaints.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. This order shall dispose of above two captioned complaints filed by the complainants before this Authority under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with relevant rules of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the section 11(4)(a) 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. The core issues emanating from the above captioned complaints are similar in nature. The complainants in the above referred complaint no. 2876 of 2022 and



complaint no.2880 of 2022 had respectively booked a unit in the respondent's project namely, The Cubix, being. The fulcrum of the issue involved in the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question . Therefore, both the captioned complaints are being taken up together as a bunch with complaint no. 2876 of 2022 as a lead case for the purpose of disposal.

A UNIT AND PROJECT RELATED DETAILS

3. 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 of the Complaint no. 2876 of 2022	Details of the Complaint no. 2880 of 2022
1.	Name of the project	The Cubix	The Cubix
2.	Nature of the project	Residential Complex	Residential Complex
3.	RERA Registered/not registered	Registered-39-2018	Registered-39-2018
4.	Details of unit	A2-205,2nd Floor,1300 sq. ft.	A2-404,4th Floor,1300 sq. ft
5.	Date of builder buyer agreement	30.11.2013	10.10.2013
6.	Possession clause in	“Builder based on its present plans and	“Builder based on its present plans and



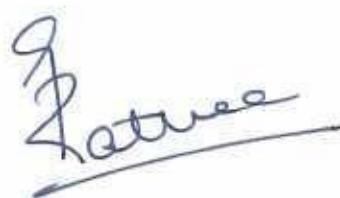
	builder buyer agreement	estimates and subject to all exceptions,except to complete construction of the said project and offer to make possession of the said Flat(s) to the Buyer within a period of 42(forty two) Months from the date of signing of this agreement with a grace period of 6 (six) months subject to delays due to non-availability of construction material and labours, or delays due to force majeure conditions and reasons beyond control of the Builder in which case time of completion shall be deemed to reasonably extended.However, if the construction is completed earlier, the possession thereof can be delivered even earlier. The objection of the Buyer is this regard not tenable.”	estimates and subject to all exceptions,except to complete construction of the said project and offer to make possession of the said Flat(s) to the Buyer within a period of 42(forty two) Months from the date of signing of this agreement with a grace period of 6 (six) months subject to delays due to non-availability of construction material and labours, or delays due to force majeure conditions and reasons beyond control of the Builder in which case time of completion shall be deemed to reasonably extended.However, if the construction is completed earlier, the possession thereof can be delivered even earlier. The objection of the Buyer is this regard not tenable.”
7.	Due date of Possession	30.05.2017	10.04.2017
8.	Total sale consideration	₹ 34,63,900	₹ 35,56,494
9.	Amount paid by the complainant	₹ 36,07,828	₹ 35,56,494



10.	Offer of possession	10.11.2021	10.11.2021
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B. FACTS OF LEAD CASE AS STATED IN THE COMPLAINT

4. Facts of complaint are that the complainant had booked a unit in the project of the respondents namely "The Cubix" at Sector-23, Dharuhera, Distt Rewari, Haryana. Vide builder buyer agreement dated 30.11.2013 a residential flat bearing n. A2-205, 2nd floor admeasuring 1300 sq. ft. was allotted to the complainant in the project in question. As per Clause 6(1) of the agreement possession of the said flat was to be delivered to the buyer within a period of 42 months from the date of signing of this agreement with a grace period of 6 months subject to delays due to non-availability of construction material and labours, or delay due to force majeure conditions and reasons beyond control of the builder in which case time of completion shall be deemed to reasonably extended. As per said clause respondent was liable to hand over the possession of the booked unit by 30.05.2017.
5. Basic sales price of the flat was fixed ₹34,62,900/- against which the complainant has already paid an amount of ₹ 36,07,828/-. It has been alleged by the complainant that despite the payment of ₹ 42,13,860/-, respondent has failed to deliver possession of the booked unit in accordance with the terms and conditions of the builder buyer agreement.



6. That an offer of possession was issued to the complainant on 10.11.2021, after an inordinate delay from the due date of possession. It has been alleged that the said offer of possession was not accompanied by Occupation Certificate, and the unit was not in a habitable condition. Despite repeated requests, the respondent failed to disclose the status of the Occupation Certificate, thereby rendering the validity of the offer of possession doubtful. A copy of the offer of possession has been annexed as **Annexure P-3**.
7. It has further been alleged that as on the date of the alleged offer of possession, basic amenities such as electricity supply, water supply, roads and pavement, sewerage and garbage disposal systems, storm water drainage, street lighting and other essential services were not completed. Despite the absence of these basic amenities, the respondent issued the offer of possession and raised further monetary demands from the complainant.
8. The complainant has further stated that upon receipt of the offer of possession dated 10.11.2021, it was found that the respondent had mentioned the carpet area as 655.95 sq. ft. against the originally promised super area of 1300 sq. ft. It has been alleged that the carpet area was clearly mentioned in the brochure at the time of booking and therefore if there was any reduction in the carpet area, the respondent was required to proportionately revise the super area and refund the excess amount charged to the complainant.
9. It has also been alleged that at the time of issuing the offer of possession, the respondent unilaterally imposed ECC/ESS charges and meter charges amounting



to ₹2,27,168/- without providing any detailed breakup of ECC, ESS, meter or maintenance charges, which was arbitrary and one-sided.

10. The complainant has further alleged that the Builder Buyer Agreement was executed in a manner that allowed the respondent to charge interest at the rate of 18% per annum on delayed instalments payable by the complainant, whereas in case of delay by the respondent, the penalty payable by the respondent was fixed at a nominal amount of ₹ 5/- per sq. ft. per month, which is stated to be illegal, arbitrary and unilateral. A copy of the Builder Buyer Agreement has been annexed as **Annexure P-4**.

C RELIEF SOUGHT

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

- i. To pass an order for delay interest on paid amount of ₹ 36,07,828/- from 30.05.2017 along with pendent lite and future interest till actual possession thereon @ 18%.
- ii. To direct the respondent to adjust the delay in last demand and immediately hand over the physical possession of unit in habitable condition with all the amenities.
- iii. To direct the respondent to pay delay possession charges on total paid amount without deducting the taxes and other govt. dues because complainant always paid amount before due date and delay in possession is made by the respondent even all demanded amount paid by the



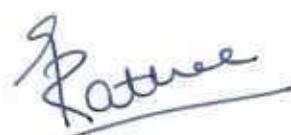
complainant before 2016 even complainants already paid interest on these amount to bank .

- iv. To direct the respondent to quash ECC/ESS cost and meter charges ₹ 227168/-.
- v. To direct the respondent to not raise any future demand.
- vi. To direct the respondent to clarify the super Area v/s carpet area ratio and revise the area and raise the fresh demand accordingly.
- vii. To direct the respondent to charged electricity bill as per government rate.
- viii. To direct the respondent to repair the fault of workmanship like seepage etc. in the building.
- ix. To pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
- x. To pass such other and further order(s) as this Hon'ble Regulatory Authority may deem fit and proper in the facts and circumstances of the present case.

D REPLY SUBMITTED ON BEHALF OF RESPONDENT

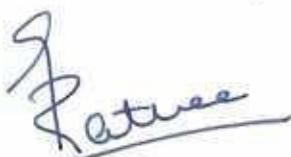
Learned counsel for the respondent filed detailed reply on 17.01.2023 pleading therein:

12. That the Section 31 of the RERA Act 2016 permits an aggrieved person to file a complaint before the Authority or the Adjudicating Officer for violation of the provisions of the Act or the rules and regulations made thereunder. In the present



complaint the claims seeking compensation fall exclusively within the jurisdiction of the Adjudicating Officer under Section 71 of the 2016 Act, and such matters cannot be entertained by this Ld. Authority.

13. That in the given facts and circumstances, it is categorical to note that since the binding rights and obligations of the parties are derived from the builder buyer agreement dated 30.11.2013, which was executed prior to the implementation of the Real Estate (Regulation and Development) Act, 2016, the latter is not applicable and in such a circumstance, the Act cannot be allowed to re-open or re-write a contract. That agreements that were executed prior to the implementation of RERA Act, 2016 and Rules, 2017 shall be binding on the parties and cannot be reopened.
14. The respondent company had registered the project under RERA dated 20.08.2018 with Registration No. HRERA-PKL-RWR-39-2018. Respondent had endeavoured to timely complete the construction of the project. In developing the project the respondent had incurred a cost of ₹ 103,12,97,759/- for completion of the project in question whereas the amount that had been received by the respondent from allottees in only ₹ 2,55,749,705/-. The construction of the project suffered badly, for no fault of the respondent, firstly by incurring cost of completion of the project from his own resources, secondly by not getting the amount outstanding against the allottees till date i.e. even after completion of project and offer of possession and thirdly by getting burdened of false and frivolous litigations against the respondent by the allottees, fourthly for the time



taken by Town and Country Planning for grant of Occupation Certificate due to outburst of Vovid-19.

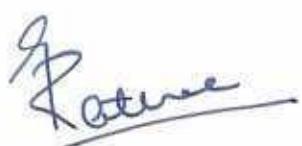
15. The complainant never adhered to the payment plan and committed various defaults of payment. The complainant has not cleared the outstanding against his unit till date, despite receipt of offer of possession and numerous requests/reminders of payment by the respondent that shows that the complainant is not interested in taking possession but his only intention is to enrich herself wrongfully under the garb of delay possession interest. Respondent has put forth its best efforts to complete the project. However, on accounts of factors/circumstances which were beyond the control of the respondent has restrained the respondent to complete the project in question within agreed period i.e the force majeure conditions.

16. That after spending its own resources, the respondent completed the construction of the project within two years of its registration. However, thereafter Covid 19 struck the nationwide lockdown due to which the application for grant of occupation got delayed. That the Haryana Government, Town and Country Planning also passed notification dated 25th June 2021 whereby the State of Haryana decided to grant relief to the Real Estate Industry and it has been very clearly stated in said notification that the moratorium of six months for making various compliances was granted to the Real Estate Sector during first wave of COVID-19 outbreak vide memo. Misc. 1025/2020/13188 dated 28.07.2020 and it was further extended to 31.05.2021. Hon'ble Authority



is requested to consider such period as force majeure and the burden of payment of interest for the period from March 2020 till grant of OC i.e. 08.11.2021 must not be put on the respondent as the delay for grant of OC has been caused without any fault of respondent. That the Hon'ble Authority had also considered period from 25.03.2020 till 24.09.2020 as force majeure period due to outbreak of Covid-19 and granted relief/extension in compliance with the various provisions of the RE(R&D) Act, 2016

17. That the Hon'ble Supreme Court, considering situation arisen due to spread of COVID-19, vide order dated 23.03.2020 in SUO MOTO WRIT PETITION (CIVIL) No. 3/2020, also extended the period of limitation with effect from 15.03.2020 in all proceedings before Courts/ Tribunals across the country till further orders. The order passed by the Hon'ble Supreme Court on 23.03.2020 in SUO MOTO WRIT PETITION (CIVIL) No. 3/2020 has come to end on 14.03.2021 by virtue of order dated 08.03.2021 after which the Hon'ble Supreme Court of India vide its Order dated 27.04. 2021, restored the order dated 23.03. 2020 due to the sudden and second outburst of Covid-19 Virus throughout the nation and in continuation of order dated 08.03.2021, directed that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders. As such the respondent is also entitled for benefit of such force majeure period and should be exempted from charge of delay interest



from March 2020 to 08.11.2021 as covid Period is also one of the major reasons for delay in acquiring occupation certificate.

18. That after completion of the project, respondent had moved an application dated 07.12.2020 before the Hon'ble Director, Town and Country Planning, Haryana for grant of Occupation Certificate. Same was received on 08.11.2021. Thereafter, the respondent had offered the possession of the unit to the complainant on 10.11.2021.
19. That complainant denied to take possession of the unit in question without any substantive reason hence the complainant is liable for breach of provision of section 19(10) of the RERA Act, 2016 as the complainant is at fault for not taking over possession even after issuance of offer of possession letter. Thus instant complaint needs to be set aside on this basis only.
20. Approximately 30 families are residing happily in the said project and numerous other allottees are in process of taking possession which is the evidence that the provisions of all basic and necessary amenities in the said project are complete. Report annexed herewith as Annexure R-9 is credence to completion of the project with all amenities as such the refusal of complainant to take possession after receipt of offer of possession on account of not in habitable condition is only bald allegation without any conducive evidence.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT

21. Ld. counsel for the complainant appeared and submitted that there has been a delay in handing over the possession. The offer of possession which was granted on 10.11.2021 by the respondent is not valid offer of possession as basic amenities like electricity charges, supply plan, water supply plan etc. have not been completed till date. He further contended that respondent was liable to handover the possession of the unit in 2017 as per Buyer's Builder Agreement dated 30.11.2013 however respondent had defaulted in handing over the possession within stipulated time. He also submitted that at the time of offer of possession, the respondent promoter had illegally imposed ECC/ESS costs and meter charges, and even break up of charges ECC/ESS was not provided. The builder offered the carpet area of 655.95 Sq. Ft. against Super Area 1300 Sq. Ft.
22. In rebuttal, Ld. counsel for the respondent argued that the project was delayed due to the default of the allottees in making payment and the delay was further compounded by force majeure conditions. It is further contended that the respondent had completed the project despite several adversities and non-payment by the allottees, utilizing their own resources. The respondent also stated possession of the flat in question was offered to the complainant on 10.11.2021 after receiving the occupation certificate from the competent authority.



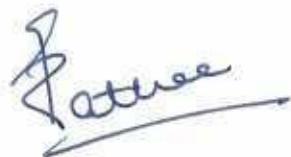
F. ISSUES FOR ADJUDICATION

23. Whether the complainant is entitled for interest accrued on account of delay in handing over of possession in terms of Section 18 of Act of 2016?
24. Whether the complainant is liable to pay ECC/ESS/Meter/Maintenance charges?
25. Whether the respondent has illegally reduced the area of the unit ?

G. FINDINGS ON THE PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENT

G.1 Objection with regard to jurisdiction of the Authority.

Respondent in its reply has contended that the complaint does not fall within the jurisdiction of this Authority and that the reliefs claimed are liable to be adjudicated by the Adjudicating Officer under Section 71 of the Act. In this regard, Authority observes that Section 31 of the Real Estate (Regulation and Development) Act, 2016 expressly empowers any aggrieved person to file a complaint before the Authority for violation or contravention of the provisions of the Act or the rules and regulations made thereunder. The present complaint primarily relates to delay caused in handing over possession and consequential interest, which squarely falls within the jurisdiction of this Authority under Section 18 of the Act. However, it is clarified that claims relating to compensation, if any, are to be adjudicated by the Adjudicating Officer under



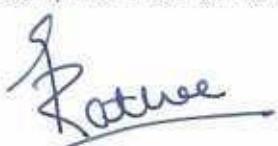
Section 71 of the Act, whereas the Authority is competent to decide issues relating to delay in possession and interest thereon. Accordingly, the objection regarding lack of jurisdiction is rejected. Authority observes that position of law stands cleared on account of the verdict of Hon'ble Supreme Court delivered in similar matters pertaining to the State of Uttar Pradesh in lead SLP Civil Appeal No. 6745-6749 titled as *M/s. Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh & Ors. Etc.* Thereafter, Hon'ble High Court of Punjab and Haryana has further clarified the matter in *CWP No. 6688 of 2021 titled as Ramprastha Promoters and Developers Pvt. Ltd. v. Union of India and Ors. vide order dated 13. 01.2022*. The Supreme Court has decided on the question of jurisdiction of the Authority and/or the adjudicating of the direct return/refund of the amount to the allottees under Sections 12, 14, 18 and 19 of the Act of 2016 in *Civil Appeal Nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Private Limited Vs. State of UP And Others etc.* Relevant para of the said judgment is being reproduced below

". From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory Authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory Authority which has the

power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016" Thus, the Authority has complete subject matter jurisdiction to adjudicate this matter."

G.II Objection regarding execution of builder buyer agreement prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure



that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects, furthermore, as per

section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

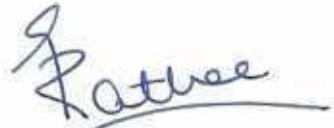
Execution of floor buyer agreement is admitted by the respondents. Said agreement is binding upon the parties. As such, the respondents are under an obligation to hand over possession as stipulated in the agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

H. OBSERVATIONS AND DECISION OF AUTHORITY

26. It is pertinent to mention here that at the time of filing of the present complaint, complainant pleaded M/s Ashiana Realtech Pvt Ltd.(respondent no. 1) and Intime Developers Pvt Ltd(respondent no. 2) as necessary party to the present complaint. During the course of proceedings, it was disclosed by the counsel of the respondent that the name of the respondent company has been changed from M/s Ashiana Realtech Pvt Ltd to M/s Movish Realtech Pvt Ltd and that both these companies are one and the same. Pursuant to that the complainant vide application dated 08.01.2025 had filed an amended memo of parties impleading M/s Movish Realtech Pvt Ltd as respondent no. 1(formerly known as M/s Ashiana Realtech Pvt Ltd.) as both companies are the same. It is further noted that during the course of adjudication, the complainant had filed another

application dated 04.08.2025 pleading that she is seeking no relief qua respondent no. 2 i.e Intime Developers Pvt Ltd and the same may be deleted from the array of the parties. Along with said application the complainant had filed an amended memo of parties pleading therein only M/s Movish Realtech Pvt Ltd as the answering respondent/ necessary party. Considering the application dated 04.08.2025 filed by the complainant, since the complainant is not seeking any relief against respondent no.2 i.e Intime Developers Pvt Ltd , therefore, the directions are being passed against respondent no.1 i.e M/s Movish Realtech Pvt Ltd (herein after referred as respondent)

27. Authority has gone through the rival contentions. In light of background of the matter as captured in this order and also arguments submitted by both parties, Authority observes that admittedly complainant had purchased a flat bearing no. A2-205, ground floor admeasuring, 1300 sq. ft. Super Area in the real estate project "The Cubix" located at Sector-23, Dharuhera, District Rewari, Haryana vide builder buyer agreement dated 30.11.2013. The builder buyer agreement was executed between complainant Mrs. Kailash Devi and M/s Ashiana Realtech Pvt. Ltd now known as Movish Realtech Pvt. Ltd. on 30.11.2013. As per annexure II of the builder buyer agreement basic sales consideration of the unit was ₹ 34,63,900/- against which the complainant had paid an amount of ₹ 36,07,828/-. Perusal of clause 6(i) of the builder buyer agreement reveals that the builder i.e, respondent had committed to complete construction of the said project and make offer of possession of the said flat to the buyer within 42



months from the date of signing of builder buyer agreement with a grace period of 6 months subject to delay due to non-availability of construction material and labour or delay of instalments by the buyers of other flats and/or delay due to force majeure conditions and reasons beyond the control of the builder. It is the contention of the complainant that the respondent has failed to complete the project and thus delayed delivery of possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint is seeking possession of the booked unit along with delay interest.

28. As per Clause 6(i) of the Builder Buyer Agreement, possession of the unit was to be delivered within a period of 42 months from the date of execution of builder buyer agreement i.e by 30.05.2017. Further, the promoter shall be entitled to a grace period of 6 months after expiry of 42 months, subject to delays on account of force majeure conditions, non-availability of construction material, labour issues and other reasons beyond the control of the builder.

29. Admittedly the delivery of possession in the present case has been delayed beyond a period of four years. Respondent has further relied upon various events to justify the delay in offering possession. Respondent has attributed this delay in construction of the project to disruption in construction activities on account of NGT order dated 08.11.2016 imposing temporary restrictions on construction, reservation agitation in Haryana, Demonetization in November, 2016, Ban on sand mining / shortage of sand, restrictions on excavation of topsoil and

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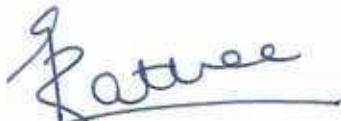
manufacture of bricks, implementation of GST w.e.f. 01.07.2017, revision of layout plan/service plan/fire plan and restrictions on use of ground water (orders dated 31.07.2020). Though the respondent has given a slew of reasons which had allegedly hampered the construction of the project, however, respondent/promoter has failed to place on record any material to demonstrate that these events resulted in complete stoppage of construction activities at the project site or that such events continued uninterrupted so as to prevent completion of the project within the stipulated period. Aforesaid events were either temporary in nature, general industry-wide issues or regulatory measures. General assertions regarding labour shortage or construction material constraints, without project-specific evidence establishing impossibility of performance, cannot be treated as force majeure. Respondent has failed to adequately prove the extent to which the construction of the project in question got affected.

Further, the respondent has cited COVID-19 as force majeure condition banning construction activities thus causing a delay in construction of the project. In this regard, Authority observes that Covid-19 Pandemic outbreak hit construction activities post 22nd March 2020, thereafter, nation-wide lockdown was imposed by the Central Government which caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came at a halt. Further,

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the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of all real estate projects due to the force majeure event of Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority granted general extension to all the real estate projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic. As per HRERA notification dated 26.05.2020 and 02.08.2021, an extension of 9 months is granted for the projects having completion/due date on or after 25.03.2020. However, the completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.05.2017 which is much prior to 25.03.2020. By the time that the Covid-19 pandemic halted the construction activities, the construction of the project in question should have already been completed and possession should have been delivered to the complainant. Therefore, in view of above said notifications and observations, no extension is granted to the respondent for the project in question. Furthermore, 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 has observed that:

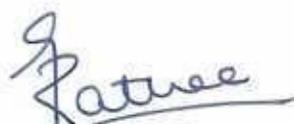
“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019.



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 as an excuse for non-performance of contract for which deadline was much before the outbreak itself

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.

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 30.05.2017, meaning thereby that respondent should have applied and obtained occupation certificate by 30.05.2017, however, as per record, the respondent had applied for issuance of occupation certificate on 07.12.2020 i.e., after lapse more of the 3 years from the stipulated time and thereafter the same was received on 08.11.2021. 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. Therefore, no concession is made out.

Herein, all the pleas/ground taken by the respondent does not entitle the respondent/promoter to any extension of the time in stipulated period for delivery of possession. Therefore, 30.05.2017 is held to be the deemed date of possession without entitlement to any further grace period, and the delay in offering possession is attributable solely to the respondent.

30. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 30.05.2017. However, respondent failed to complete the construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainant on 10.11.2021. Said offer of possession was issued after receipt of occupation certificate on 08.11.2021. It is the submission of the respondent that the offer of possession was issued after completion of all development works and receipt of occupation certificate, thus the complainant should have accepted the said offer of possession. However, the complainant failed to do the same. On the other hand, it is the contention of the complainant that said offer of



possession was unacceptable since demands raised vide said offer of possession were not in consonance with the terms of the agreement.

31. With regard to the contention of the complainant, the Authority has carefully examined the statement of account issued along with offer of possession dated 10.11.2021 and observes as follows:

- a. With regard to the demand raised on account of ECC/ESS charges & Meter charges the builder has placed reliance on clause 1.5 of the agreement, submitting therein that the complainant had agreed to pay the cost of electrical connection charges and electrical installation and fittings. The relevant clause is reproduced below for reference:

"The Buyer shall also pay allied charges towards cost of installation of electrical connection charges, lifts, elevators, electrical installations and fittings, fire fighting equipments, sanitary and water fittings and other equipments installed of capital nature in relation to the said project, at such rates as decided by the Builder."

In this regard it is observed that electricity connection charges/electric substation charges are shared between the respondent promoter and the complainant/allottee based on the stage of construction. As per practice, the cost of ECC/ESS are generally included in the total cost of the unit which is being charged from the allottee and are not independently charged. Reliance is placed upon Explanation (iv) of the clause 1.2 of the Model Agreement of the RERA Act 2016 reproduced below:

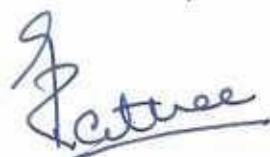


"The total price of Plot/Unit/Apartment for residential, commercial, industrial, IT or any other usage (as the case may be), along with parking (if applicable), includes recovery of the price of land, development/construction of not only the Apartment/Unit/Plot but also of the common areas (if applicable), internal development charges, infrastructure augmentation charges, external development charges, taxes/fees/levies, etc., cost of providing electric wiring, electrical connectivity to the apartment, lift, water line and plumbing, finishing with paint, marbles, tiles, doors, windows, fire detection and firefighting equipment in the common areas, maintenance charges as per para 11, and includes the cost for providing all other facilities, amenities and specifications to be provided within the Plot/Unit/Apartment for residential purposes."

In view of above it is observed that promoter in his demand letter dated 12.01.2023 has raised an amount of ₹1,81,148 on account of ECC/ESS Cost & Meter Charges without mentioning the total paid amount and total proportionate ratio as to which this amount has been arrived under "allied charges". This clause of the builder buyer agreement is found contrary/inconsistent with the provisions of the Act and elusive in nature. The cost of ECC/ESS can be burdened upon total cost of the unit by the respondent but; cannot be charged independently making it a chargeable component of the unit. Thus, the complainant is not liable to pay the same. With regard to the meter charges it is observed that these charges are one-time nominal costs related to the specific meter for the unit booked by the allottee. The complainant is liable to pay these charges and shall also be entitled to seek documentary proof of said demand.



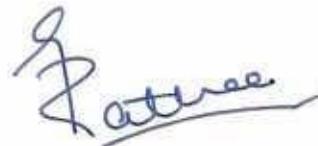
- b. With regard to demands raised on account of maintenance charges, it is observed that according to clause 10. of the builder buyer agreement, complainant has agreed to pay demand raised on account of maintenance charges, therefore the complainant is liable to pay the same w.e.f 10.11.2021 (date of valid offer of possession after obtaining occupation certificate).
- c. With regard to demand raised on account of GST charges, Authority observes that, in projects where the due date of possession was prior to 01.07.2017 (the date on which GST came into force), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee, as the liability to pay such tax had not arisen up to the due date of possession as stipulated in the Builder Buyer Agreement. In the both complaints, the deemed date of possession was prior to 01.07.2017, i.e., 30.05.2017 and 10.04.2017, respectively. Therefore, the complainant is not liable to pay GST charges.
- d. With regard to the contention of the complainant with respect to the offer of possession dated 10.11.2021, contending that the respondent offered a carpet area of 655.95 sq. ft. instead of the super area of 1300 sq. ft. as stipulated in the Buyer-Builder Agreement dated 30.11.2013. The complainant has also alleged that there was no revised plan of the project provided to support this offer. Upon reviewing the annexure-II of the buyer builder agreement, Authority observes that the super area of 1300



sq. ft. has been clearly stipulated, which is consistent with the details provided in offer of possession dated 10.11.2021. It is noteworthy to mention that the complainant during the hearing held on 06.08.2024 had expressly withdrew the aforesaid claim from her reliefs. Therefore, said issue is not been adjudicated upon.

- e. With regard to issue regarding charge of electricity bill as per government rate it is observed that the complainant, despite having sought the said relief in the complaint ,has neither pressed nor substantiated the same through pleadings or arguments. The said relief is therefore not adjudicated upon.
- f. With regard to issue regarding fault of workmanship, seepage in building it is observed that the complainant, despite having sought the said relief in the complaint ,has neither pressed nor substantiated the same through pleadings or arguments. The said relief is therefore not adjudicated upon.

32. The facts set out in the preceding paragraph demonstrate that, admittedly, the delivery of possession of the booked unit has been delayed beyond the stipulated period of time. As per para 30 of this order, respondent should have delivered possession of the unit by 30.05.2017. However, the respondent failed to construct the project and deliver possession of the booked unit. An offer of possession was issued to the complainant on 10.11.2021. Along with said offer of possession respondents had issued a detailed statement of account of payable and receivable amounts which has been challenged by the complainant on

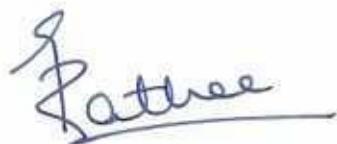


account of several discrepancies that have been already adjudicated in para 32 of this order. Said offer of possession was a valid offer of possession duly issued after receipt of occupation certificate. There was no impediment in the complainant having accepted the same. Any dispute with regard to the payables and receivable amount could have been decided as per law. Admittedly there has been an inordinate delay in delivery of possession but the complainant wishes to continue with the project and take possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant. So, the Authority hereby concludes that the complainant is entitled to receive delay interest for the delay caused in delivery of possession from the due date of possession i.e 30.05.2017 till the date of valid offer of possession i.e 10.11.2021. 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 sub-section (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"

33. Hence, 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 as on date works out to 10.80% (8.80% + 2.00%) from from the due date of possession till the date of a valid offer of possession i.e 10.11.2021.

34. Authority has got calculated the interest on total paid amount from due date of possession and thereafter from date of payments whichever is later till the date of offer of possession in respective complaints as mentioned in the table below:



Complaint No. 2876 of 2022

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 10.11.2021 (in ₹)
1.	36,07,828/-	30.05.2017	17,35,790/-
Total:	36,07,828/-		17,35,790/-

Complaint No. 2880 of 2022

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 02.08.2024 (in ₹)
1.	35,56,494/-	10.04.2017	17,63,709/-
Total:	35,56,494/-		17,63,709/-

I.DIRECTIONS OF AUTHORITY

35. 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. In Complaint No. 2876 of 2022 and Complaint No. 2880 of 2022, the respondents are directed to pay upfront delay interest of ₹17,35,790/- and ₹17,63,709/-, respectively, to the complainant towards the delay already caused in handing over possession within a period of 90 days from the date of this order
- ii. Complainant will remain liable to pay balancee consideration amount, if any, to the respondent.
- iii. The respondent shall not charge anything from the complainant which is not a part of builder buyer agreement.

Disposed of. Files to be consigned to record room after uploading of order on website

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DR. GEETA RATHEE SINGH
[MEMBER]