



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1170 of 2023
Date of filing:	17.05.2023
Date of first hearing:	03.08.2023
Date of decision:	27.01.2026

Bhupender Pal
R/o II.No. 666/21, Main Gali,
Vishal Nagar, Rohtak,
Haryana 124001

....COMPLAINANT

VERSUS

Omaxe Ltd.
10, Local Shopping Complex,
Kalkaji, New Delhi 110019

....RESPONDENT

Present: - Adv. Sudeep Gahwalat, Learned Counsel for the Complainant through video conference

Adv. Munish Gupta and Adv. Manjinder Kumar, Learned Counsel for the respondent through video conference

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 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, the details of sale consideration, the 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	Omaxe Shubhangan, Bahadurgarh
2.	Unit no.	RHBH/Tower-11/Fifth/501 (3-4 BHK)
3.	Unit area	1280 sq.ft
4.	Date of booking	25.08.2012
5.	Date of builder buyer agreement	03.12.2016
6.	Due date of offer of possession (18+6 months)	03.12.2019
7.	Possession clause	Clause 40(a) The company shall complete the development/construction of the unit/project within a period of 18 months from the date of signing of this agreement by the buyer(s) or within an extended period of six months. Completion of development of the unit within



		such 24 months is subject to force majeure conditions (as mentioned in clause (b) hereunder) and subject to timely payment by the unit buyer(s) or subject to any other reasons beyond the control of the company.
8.	Total sale consideration	₹31,17,029.20/-
9.	Amount paid by complainant	₹17,89,123/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. That the complainant booked a residential flat in the Respondent's project namely "OMAXE SHUBHANGAN", situated at Sector-4A, Bahadurgarh, Haryana in the year 2012 and paid a sum of ₹3,00,000/- in cash towards booking amount.
4. That a builder buyer's agreement was entered into between the complainant and the respondent, whereby the complainant was allotted a residential flat bearing Unit No. 502, Fifth Floor, Tower No. 20 (3-4 BHK), having a super built-up area of 1280 sq. ft., for a total sale consideration of:
 - i. Basic Sale Price (BSP): ₹28,01,029.20/-
 - ii. Additional Cost: ₹40,000/-
 - iii. External Development Charges (EDC): ₹2,56,000/-
 - iv. Interest Free Maintenance Security (IFMS): ₹20,000/-



v. Total Sale Consideration: ₹31,17,029.20/-.

Copy of the builder buyer's agreement is annexed with the complaint as Annexure P-1.

5. That the complainant has paid a total amount of ₹17,89,123/- to the respondent till date. Copies of the payment receipts are annexed as Annexure P-2.
6. That despite lapse of nearly 10 years from the date of booking, the respondent has failed to hand over physical possession of the residential flat to the complainant. The complainant has suffered immense financial loss, mental agony and harassment due to the inordinate delay caused by the respondent.
7. That the respondent issued an allotment/agreement signing letter dated 11.03.2014, whereby the complainant was requested to sign and return the builder buyer's agreement within 15 days, failing which it would be presumed that the complainant had accepted the terms and conditions mentioned therein.
8. That upon receipt of the said letter dated 11.03.2014, the complainant duly signed the allotment letter / builder buyer's agreement and submitted the same to the respondent immediately. However, the respondent failed to execute the agreement within a reasonable time. It is pertinent to note that the stamp paper was issued on 08.03.2014, whereas the builder buyer's agreement was eventually executed on

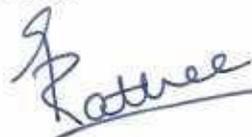


03.12.2016, i.e., after a delay of more than 2 years and 9 months, solely attributable to the respondent. Copy of the allotment letter/ builder buyer's agreement is annexed herewith as Annexure P-3.

9. That the builder buyer's agreement is completely one-sided, arbitrary and unconscionable. As per clause 40(g) of the agreement dated 03.12.2016, in case of delay in handing over possession, the complainant is entitled to compensation at the meagre rate of ₹5/- per sq. ft. per month, after expiry of 18 months plus a grace period of 180 days, i.e., a total of 24 months from the date of execution of the Agreement, ending on 03.12.2018.
10. On the other hand, clause 35 of the agreement empowers the respondent to charge penal interest @18% per annum, and thereafter @24% per annum, on delayed payments by the allottee. Such unilateral and discriminatory clauses are illegal and liable to be struck down, and the provisions of RERA, Act 2016 must be read into the Agreement.
11. That the respondent has indulged in unfair trade practices, cheating and harassing innocent homebuyers after collecting substantial amounts from them, without delivering possession. This constitutes gross deficiency in service and violation of statutory obligations under RERA.


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12. That the respondent has acted in blatant violation of the terms of the builder buyer's agreement and statutory provisions, by giving false assurances and failing to hand over possession within the stipulated period. The respondent's conduct clearly reflects an intention to defraud the complainant, and the complainant reserves the right to initiate appropriate civil and criminal proceedings.
13. That as per clause 40(a) of the builder buyer's agreement, the respondent was obligated to hand over physical possession of the residential flat within 18 months with a grace period of 180 days from the date of execution of the Agreement, i.e., by 03.12.2018. The said period has long expired, yet possession has not been offered till date.
14. That the Hon'ble Authority has already adjudicated a similar matter in Complaint No. 1080 of 2018 titled "Rahul v. M/s Omaxe Ltd."; decided on 05.03.2019, wherein relief was granted to the allottee under similar facts and circumstances. Copy of the said order is annexed as Annexure P-4.
15. That as per Section 2(za) of the Real Estate (Regulation and Development) Act, 2016, the rate of interest payable by the promoter in case of default shall be the same as the rate of interest chargeable from the allottee. Therefore, the respondent is liable to pay interest at the same rate as charged from allottees, and the statutory provisions override the one-sided clauses of the agreement.


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16. That the Complainant is entitled to invoke Section 18 of RERA, 2016, as the Respondent has failed to deliver possession within the time specified in the Agreement. Since the complainant does not intend to withdraw from the project, the respondent is liable to pay monthly delay interest till actual handing over of possession.
17. That the cause of action is continuous, as the respondent has neither handed over possession nor compensated the complainant for the prolonged delay.
18. That in view of Rule 15 of the HRERA Rules, 2017, the complainant is entitled to interest @ SBI MCLR + 2% w.e.f. 03.12.2018 till the date of actual physical possession, and a direction be issued to the respondent to hand over possession forthwith. Hence, present complaint is filed.

C. RELIEF SOUGHT

19. Complainant in his complaint has sought following relief:
 - i. In exercise of powers under Section 35, direct the respondent to place on record all statutory approvals and sanctions of the project.
 - ii. To pay delay possession interest over the payment deposited by the complainant in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2% w.e.f. 3rd December 2018 to actual physical date of possession.



- iii. To direct the respondent to handover the possession of residential flat as soon as possible.
- iv. Any other relief as this Hon'ble Authority may deem fit and appropriate 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 20.09.2023 pleading therein:

20. Respondent has challenged the maintainability of the complaint on following grounds:

a. That the alleged dispute raised by the Complainant is liable to be referred to arbitration under Section 8 of the Arbitration & Conciliation Act, 1996, as amended by the Arbitration & Conciliation (Amendment) Act, 2015, in terms of clause 62 of the Builder Buyer's Agreement dated 03.12.2016. It is submitted that the amended Section 8 of the Arbitration Act makes reference to arbitration mandatory, notwithstanding any judgment to the contrary, particularly where the dispute involves complex questions of fact requiring detailed evidence. Hence, this Hon'ble Authority lacks jurisdiction to entertain the present complaint.

b. That this Hon'ble Authority lacks territorial jurisdiction to entertain the present complaint in view of clause 63 of the agreement dated 03.12.2016, which categorically stipulates that Courts at


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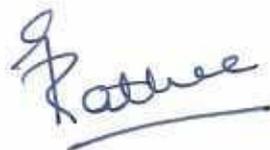
Bahadurgarh and Delhi alone shall have jurisdiction in respect of all matters arising out of the allotment. On this ground alone, the complaint is liable to be dismissed.

c. That the Agreement in question pertains to the year 2016, i.e., prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016, and therefore the complaint filed under RERA is not sustainable. On this ground alone, the complaint deserves dismissal.

d. That the complaint is barred by limitation. As per the complainant's own version, the last payment was made in January 2015. The present complaint, filed after an inordinate delay, is therefore time-barred and liable to be dismissed on this ground alone.

e. That no cause of action has arisen in favour of the complainant. Despite repeated communications, the complainant has failed to clear outstanding dues, and therefore possession could not be offered. That the complainant opted for a construction linked payment plan, under which payments are strictly linked to construction stages. As per Section 19(6) of the RERA Act, timely payment is a statutory obligation of the allottee, and possession is subject thereto.

21. That the complainant has not approached this Hon'ble Authority with clean hands and has deliberately suppressed material facts. A credit note of ₹27,500/- was issued to the complainant in July 2013, which


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has been concealed. The builder buyer's agreement was forwarded to the complainant for execution in 2014, however, the same was never returned by the complainant. It was only in December 2016 that the complainant executed and returned the Agreement. Thus, there is no delay attributable to the respondent; rather, the delay occurred due to the complainant's own conduct.

22. That the complainant has further suppressed the fact that he earlier filed a consumer complaint before the Consumer Commission, Jhajjar, which was dismissed as withdrawn with liberty to file afresh; and thereafter filed a petition before the Permanent Lok Adalat (PLA), Jhajjar in 2018, which was dismissed on grounds of maintainability. Copies of the said orders are annexed as Annexure R-1 & R-2.
23. That in the earlier above said proceedings, the complainant sought refund of the deposited amount along with interest and compensation, alleging that the project was incomplete. However, in the present complaint, the complainant seeks possession along with interest, thereby taking contradictory and mutually destructive stands.
24. It is further submitted that the Agreement dated 03.12.2016 provided a possession period of 24 months, yet the complainant filed complaints as early as 2017, i.e., before the contractual possession date, clearly reflecting mala fide intention and harassment of the respondent.


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25. That the complainant is himself a chronic defaulter. Numerous reminders and demand letters were issued for payment of outstanding dues on the following dates: 03.02.2015, 03.03.2015, 26.03.2015, 21.04.2015, 01.06.2015, 01.07.2015, 01.08.2015, 18.08.2015, 01.09.2015, 29.09.2015, 30.10.2015, 20.11.2015, 01.12.2015, 17.12.2015, 31.12.2015, 16.01.2016, 01.02.2016, 17.02.2016, 01.03.2016, 17.03.2016, 01.04.2016, 19.04.2016, 03.05.2016, 19.05.2016, 01.06.2016, 17.06.2016, 01.07.2016, 20.07.2016, 01.08.2016, 19.08.2016, 01.09.2016, 15.09.2016, 03.10.2016, 18.10.2016, 02.11.2016, 18.11.2016, 30.11.2016, 17.12.2016, 02.01.2017, 17.01.2017, 01.02.2017, 16.02.2017, 02.03.2017, 16.03.2017, 01.04.2017, 17.04.2017, 02.05.2017, 17.05.2017, 01.06.2017, 17.06.2017, 30.06.2017 and 16.08.2017. Due to continuous non-payment, the unit was liable for cancellation on several occasions. Copies of demand letters are annexed as Annexure R-3 (Colly).
26. That the complainant is not entitled to any interest or compensation, as the delay, if any, occurred solely due to her own default in making timely payments and failure to execute the Agreement in 2014. Without prejudice, even otherwise, compensation if at all can only be governed by clause 40(g) of the agreement, and not under RERA



provisions. Hence, the present complaint is not maintainable and it has been prayed that same kindly be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

27. During oral arguments learned counsel for the complainant and respondent reiterated arguments as mentioned in their written submissions. However, learned counsel for the complainant submitted that due to an inadvertent and bonafide typographical error, in Para no. 2 of the brief facts of the case, the unit of the complainant has been wrongly mentioned as Unit No. 502, Fifth Floor, Tower No. 20 (3-4 BHK) having super area of 1280 sq. feet whereas in the list of dates and events filed along with the complaint, the unit of the complainant has been correctly mentioned as Unit No. 501, Fifth Floor, Tower No. 11 (3- 4 BHK) having super built-up area of 1280 sq. feet in the Omaxe Shubhangan, Bahadurgarh which is also evident from the builder buyer agreement, already placed on record as Annexure P-1 with the main complaint. So, he requested that said error be rectified and an application in this regard has already been filed in the registry on 22.01.2026.

Learned counsel for the respondent also agreed that the flat booked by complainant is Unit No. 501, Fifth Floor, Tower No. 11 (3-4 BHK) and did not object to the application filed by the complainant.


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Further, learned counsel for the respondent submitted that the respondent is trying to complete the project but has not received occupation certificate till date.

F. ISSUES FOR ADJUDICATION

28. Whether the complainant is entitled for physical possession of unit along with delay interest on account of delay of physical possession of the unit in question?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

G.1 Objection regarding territorial jurisdiction

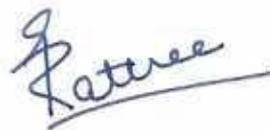
One of the preliminary objection of respondent is that Authority does not have territorial jurisdiction to entertain and try the present complaint in as much as the parties have agreed to exclude the jurisdiction of all other courts except the courts at Bahadurgarh and Delhi. In this regard it is observed that as per notification no. 1/92/2017/TTCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose. In the present case the project in question is situated within the planning area Bahadurgarh, therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.


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G.2 Objection raised by the respondent stating that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015)

Respondent raised another objection that dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 (as amended in 2015). With regard to the this objection, Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted that Section-79 of the RERA Act, 2016 bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority or the Real Estate Appellate Tribunal. Thus the intention to render such disputes as non-arbitrable seems to be clear. Also, Section 88 of the RERA Act, 2016 provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on **National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.



Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.,** Consumer case no. 701 of 2015 decided on 13.07.2017, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act

.....
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."



While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017** decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in **Priyanka Taksh Sood v/s. Sunworld Residency, 2022 SCC Online Del 4717** examined provisions that



are "Pari Materia" to section 89 of RERA act; e.g. S. 60 of Competition act, S. 81 of IT Act, IBC, etc. It held "there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, 2016 there is no bar under the RERA Act, 2016 from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act." Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code. Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the abovementioned reasons, the Authority is of the view that the objection of the respondent stands rejected.



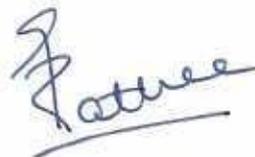
G.3 Objection raised by respondent that the present complaint is barred by limitation

Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Indian Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

G.4 Objections raised by respondent that complainant is a defaulter/offender under section 19 (6) of the Real Estate (Regulation and Development) Act, 2016, therefore, the complainant cannot seek



any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules framed thereunder.

With regard to this objection raised by the respondent, Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 are reproduced below:

19(6) "Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

As per section 19 (7) of the Real Estate (Regulation and Development) Act, 2016-

"The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

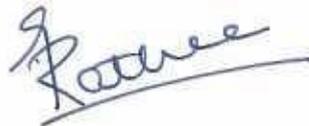
The respondent objection, claiming that the complainant is a defaulter under Sections 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 (RERA), and therefore cannot seek relief under RERA. Sections 19(6), 19(7) and 19(10) impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. In the present case, the complainant opted for construction linked plan and made more than fifty percent of the total sale consideration till 2015 i.e. even before execution of builder buyer agreement. Remaining payments

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were to be made as per the progress of the project. Various reminders and demand letters dated 03.02.2015, 03.03.2015, 26.03.2015, 21.04.2015, 01.06.2015, 01.07.2015, 01.08.2015, 18.08.2015, 01.09.2015, 29.09.2015, 30.10.2015, 20.11.2015, 01.12.2015, 17.12.2015, 31.12.2015, 16.01.2016, 01.02.2016, 17.02.2016, 01.03.2016, 17.03.2016, 01.04.2016, 19.04.2016, 03.05.2016, 19.05.2016, 01.06.2016, 17.06.2016, 01.07.2016, 20.07.2016, 01.08.2016, 19.08.2016, 01.09.2016, 15.09.2016, 03.10.2016, 18.10.2016, 02.11.2016, 18.11.2016, 30.11.2016, 17.12.2016, 02.01.2017, 17.01.2017, 01.02.2017, 16.02.2017, 02.03.2017, 16.03.2017, 01.04.2017, 17.04.2017, 02.05.2017, 17.05.2017, 01.06.2017, 17.06.2017, 30.06.2017 and 16.08.2017 were sent by the respondent to make overdue payment. Perusal of documents placed on reveals that all terms and conditions with regard to purchase of flat in question were crystallized when flat buyer agreement was executed between the parties on 03.12.2016 and prior to this there was no document executed between the parties which could show that the complainant was obligated to make payment as per a schedule and he failed to do so. Meaning thereby the reminders sent by respondent till 03.12.2016 were not backed by any legal document executed between the parties on the basis of which said demands were made, still complainant had paid fifty percent of the sale consideration by 2015. Even after 03.12.2016, the reminders did not disclose the stage of construction warranting payment of installment. Hence, respondent's stand that complainant is a defaulter cannot



be accepted. Further, the respondent did not complete the project as per agreed timelines and offer the possession on due date. Hence, there is no default on the complainant's part. Accordingly, the respondent's claim that the complainant is not entitled to relief under RERA is unsustainable. It is observed that as per Section 18 of RERA Act, once the respondent fails to deliver possession within the stipulated time frame, the complainant has the option to withdraw from the project and seek a refund. Under RERA Act, 2016 the promoter is responsible for completing the project on time and obtaining all necessary approvals. In the present case, respondent had promised to deliver possession latest by 03.12.2018. This implied that the project should have been completed by that date, and the respondent should have applied for and obtained the Occupation Certificate (OC) from the competent authority to ensure timely possession. However, the respondent has not received the Occupation Certificate till date. This delay in securing the occupancy certificate indicates that the project is either incomplete or does not meet the required legal standards. Since the project is not complete and legally valid offer of possession cannot be made, complainant allottee cannot be forced into making further payment or to accept possession of an incomplete unit. Failure to meet these obligations entitles the allottees to seek relief under RERA, such as refund with interest, however if the allottee wishes to continue with the project, promoter is liable to pay interest at prescribed rate for the delay caused.



Authority concludes that, the respondents objection under Sections 19(6), 19(7) and 19(10) of RERA are invalid. On the other hand, the respondent's failure to deliver possession by the agreed date is in breach of provisions of RERA Act. On the other hand, the respondent's failure to obtain an occupancy certificate and deliver possession by the agreed date places them in breach of RERA. The complainant is, therefore, entitled to seek relief under RERA provisions.

G.5 Objection regarding execution of BBA 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, respondents have 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, 2016. 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 floor-buyer agreements. After RERA Act, 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 dated 03.12.2016 is admitted by the respondent. Said floor buyer agreement was binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the due date of possession and in case, the respondent fails to offer possession on the due date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

G.6 Objection raised by respondent that relief sought by complainant is different from the relief sought by him earlier before other Forums

Respondent has raised another objection that complainant had earlier filed a consumer complaint before the Consumer Commission, Jhajjar and a petition before the Permanent Lok Adalat (PLA), Jhajjar in 2018, seeking relief of refund of the deposited amount along with interest and compensation, alleging that the project was incomplete, however, in the present complaint, the complainant is seeking possession along with interest, thereby taking contradictory and mutually destructive stands.

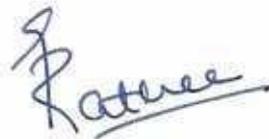
In this regard it is observed that until a dispute is finally decided by a competent forum, the aggrieved person may seek any relief from any competent forum. In the present case also, the complaint before Consumer Commissioner, Jhajjar was dismissed as withdrawn with liberty to file afresh; and petition before PLA was dismissed on grounds of maintainability



i.e. it was never decided on merits and hence there is no bar for the complainant to seek possession of the flat booked by him even if he was earlier seeking relief of the amount deposited by him.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

29. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that complainant booked a flat bearing no. RHBH/Tower-11/Fifth/501 (3-4 BHK) measuring 1280 sq.ft. in the year 2012 in the project namely 'Omaxe Shubhangan' located at Bahadurgarh being developed by the respondent and made payment of ₹17,89,123/- against total sale consideration of ₹31,17,029.20/-.
30. As per clause 40(a) of the builder buyer agreement executed between the parties on 03.12.2016, the respondent was under an obligation to handover the possession of the flat within 18 months with grace period of 6 months i.e by 03.12.2018. However, respondent failed to complete construction of the project and deliver possession within stipulated time. On the other hand, it is the contention of the respondent complainant is himself a chronic defaulter. Numerous reminders and demand letters were issued for payment of outstanding dues but complainant did not make timely payments and due to



continuous non-payment, the flat was liable for cancellation on several occasions.

The Authority has already made detailed observation in this regard in the preceding Para G.4 of this order. It is further observed that respondent has placed on record several demand letters which were respondent has not placed on record any document disclosing the amount which was to be paid by complainant, the stage at which said amount was payable and proof that the construction was completed upto that stage at the time demand was made. Further, if the complainant did not make the payments as per the demands raised, the respondent had an option to cancel the allotment and refund the amount deposited by the complainant. The last demand letter was sent on 16.08.2017 and thereafter neither any communication was sent by respondent nor the allotment was cancelled and amount paid was refunded back to complainant. The respondent is enjoying the money deposited by complainant and has not offered the possession of the unit till date.

31. The facts set out in the preceding paragraphs demonstrate that in the captioned complaint delivery of possession of the booked unit has been delayed beyond the time period stipulated in the builder buyer agreement. Possession of the unit was to be delivered to the complainant on 03.12.2018, however, no offer of possession has been



made till date. Even after a lapse of 7 years from due date of possession, respondent is not in a position to offer possession of the unit to complainant since respondent company has yet to receive for occupation certificate in respect of the unit booked. Admittedly there has been delay in delivery of possession however 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 flat, 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. So, the Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the due date of possession i.e 03.12.2018 up to the date on which a valid offer is sent to him after receipt of occupation certificate.

32. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....



Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

33. 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."



34. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the due date of possession i.e. 03.12.2018 till the date of a valid offer of possession after obtaining occupation certificate.
35. Authority has got calculated the interest on total paid amount from due date of possession i.e. 03.12.2018 till the date of this order i.e. 27.01.2026 which works out to ₹13,83,281/- and further monthly interest of ₹16,411/- as per detail given in the table below:

Sr. No.	Principal Amount	Due date of possession or date of payment whichever is later	Interest Accrued till 27.01.2026
1.	₹17,89,123/-	03.12.2018	₹13,83,281/-
Monthly interest			₹16,411/-

36. Complainant is also seeking direction to the respondent to place on record all statutory approvals and sanctions of the project. However, said relief is neither part of the pleadings nor pressed upon by the complainant during hearing. Hence, no observation is made in this regard.



I. DIRECTIONS OF THE AUTHORITY

37. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹13,83,281/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest of ₹16,411/- shall be payable by the respondent to the complainant up to the date of valid offer of possession after obtaining occupation certificate.
- (ii) Respondent shall make a legally valid offer possession of the flat bearing no. RHBH/Tower-11/Fifth/501 (3-4 BHK) measuring 1280 sq.ft to complainant within 30 days from the date of obtaining occupation certificate.
- (iii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession. However, respondent shall not charge anything that is specifically not a part for agreement for sale.



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


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

