



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Complaint no.:	1104 of 2024
Date of filing.:	09.09.2024
First date of hearing.:	22.10.2024
Date of decision.:	09.12.2025

1. Rajesh Kumar Verma s/o Lt. Sh. Nanak Chand
2. Disha Verma d/o Sh. Rajesh Kumar Verma

R/o C 95 C, Behind Shivaji College,

Raja Garden, New Delhi-110027

....COMPLAINANTS

VERSUS

M/s Konark Rajhans Estates Pvt. Ltd.,

through its Director

Regd. Office: Village Kot, Sector-14, Panchkula

Extension-II, District Panchkula, Haryana.

....RESPONDENT

**Present:**

Mr. Arjun Kundra, Learned Counsel for the complainants  
through VC

Mr. Viren Sibal, Learned Counsel for the respondent  
through VC

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

1. Present complaint dated 09.09.2024 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 unit booked by complainants, the details of sale consideration, the amount paid by them and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project.	Asha Panchkula, Sector-14, Panchkula Extention II, village Kot.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Registered Reg. no.- 173 of 2017 dated 29.08.2017
4.	Date of booking	30.03.2017
5.	Date of allotment	Not available
6.	Details of the unit.	B-0909, 9 <sup>th</sup> floor



7.	Date of Apartment Buyer Agreement	08.06.2017
8.	Possession clause as per agreement (Clause 9)	As per clause 9, the company contemplates to offer possession of the said apartment to the allottee within a period of 36 months from the receipt of the first instalment against allotment of the said apartment with a grace period of 6 months, subject to Force Majeure circumstances and due to failure of the allottee to pay in time the total sale price and other charges and dues.  Note:- The first instalment was made on 30.03.2017 as per receipt attached with the complaint.
7.	Due date of possession	30.09.2020
8.	Total sale consideration	₹28,00,001/-
9.	Amount paid by complainant	₹24,37,606/-
10.	Offer of possession.	None

## B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. The complainants made a booking application on 30.03.2017 towards booking of an apartment in the project of the respondent namely 'Asha Panchkula' situated at Sector-14, Panchkula Extension II, village Kot. Upon payment of the booking amount, the complainants were issued an allotment

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letter vide which respondent had allotted a 2 BHK apartment bearing no. B-0909 on the 9<sup>th</sup> floor, admeasuring 1110 sq. ft. Thereafter, apartment buyer agreement was executed between the parties on 08.06.2017. The basic sale price of the apartment was fixed as ₹ 20,13,011/- and the total sale consideration was fixed as ₹28,00,001 /-.

4. As per clause 9 of apartment buyer agreement, possession was to be delivered within a period of 36 months from the date of receipt of first installment against allotment of the said apartment plus a grace period of 6 months from the date of the agreement, unless there is a delay or failure due to force majeure conditions and due to failure of apartment allottee(s) to pay in time the total sale price and other charges and dues as mentioned in the agreement or any failure by allottee(s) to abide by all or any of the terms and conditions of the agreement. First installment was made on 30.03.2017, therefore, possession has been due since 30.03.2020 but the respondent has failed to deliver possession in time.
5. That till date, the complainants have made timely payments of instalments to the tune of ₹. 24,37,606/- to the respondent company. The complainant had availed a huge home loan for the purchase of this apartment. It is submitted that despite receiving all the payments on time, the respondent, however, has miserably delayed the construction and development of the project. The complainants had already made payment of the majority of the sale consideration and had no other option but to wait for the possession of the

*Rathee*

booked unit. The possession has been due since march 2020 but till date the same has not been delivered and there is no sign of completion of the same in near future. The complainant has further alleged that the terms of apartment buyer agreement were arbitrary and consisting of unilateral terms.

6. The respondent has never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondent and has led to the delay in the completion and development of the project within the time prescribed in the agreement. Delay in construction of the project is solely due to the deliberate negligence and deficiency on the part of the respondent.
7. Therefore, complainant has filed the present complaint seeking possession of the booked apartment along-with delay interest for the delay caused in delivery of possession as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016.

### **C. RELIEF SOUGHT:**

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-

a) Direct the respondent to deliver immediate possession of the unit bearing no. B-0909, Floor-9, "Asha Panchkula", Kot Village, Panchkula Extension-2, Sector-14, Panchkula, Haryana admeasuring 1110.00 sq ft. after due completion and receipt of occupancy/completion certificate along



with all the promised amenities and facilities and to the satisfaction of the complainant after removal of any deficiencies and defects; and

- b) Direct the respondent to pay prescribed rate of interest as per the Act, on the amount already paid by the complainant from the promised date of delivery i.e., 30.03.2020 till the actual physical and legal delivery of possession after receipt of the Occupancy Certificate and Completion certificate; and
- c) In the alternate, direct the respondent to pay an agreed rate of interest i.e., 12% p.a. on the amount already paid by the complainant from the promised date of delivery i.e., 30.03.2020 till the actual physical and legal delivery of possession after receipt of the Occupancy Certificate and Completion certificate; and
- d) Pass an order restraining the respondent from charging any amount from the complainant which do not form part of the apartment buyer agreement dated 08.06.2017 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges etc. whatsoever; and/or to direct the respondent to refund/adjust any such charges which they have already received from the complainant;
- e) May pass any other orders/order which the Hon'ble Authority deems fit as per the facts and circumstances of the matter.





9. During the course of arguments, learned counsel for the complainants reiterated the facts as mentioned above. He further submitted that the present matter is fully covered by judgement passed by this Hon'ble Authority in complaint no. 2543 of 2023; therefore this case may be decided on those terms itself.

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

Learned counsel for the respondent filed detailed reply on 10.03.2025 pleading therein:

10. Respondent submits that they are ready to settle the issue raised by the complainants amicably through mutual discussion failing which proper proceedings under Arbitration & Conciliation Act could be carried out as per agreed terms and conditions by the parties in clause 33 of builder buyer agreement. Authority does not have the jurisdiction to entertain the purported consumer complaint as it has been specifically stated/mentioned in the said agreement that all the disputes shall be referred to an arbitrator to be appointed as per provisions of Arbitration and Conciliation Act, 1996 (as amended).
11. That the present complaint filed by the complainants is liable to be dismissed as the delay in offering possession of the said unit to the complainants was due to force majeure events and not due to willful negligence of the respondent. A series of force majeure events which took



place during the period of development of the said project. It is further submitted that as per mandate of Constitution Bench of the Hon'ble Supreme Court in the case of *Chand Rani Vs. Kamal Rani 1993-1-SCC-519 (Para 25)* and other decisions namely, *Gomathinayagam Pillai Vs. Palaniswami Nadar 1967-1-SCR-227* and *Govind Prasad Chaturvedi v. Hari Dutt Shastri 1977-2-SCC-539 (Para 5)*, it is held that fixation of period within which contract has to be performed does not make the stipulation as to time, the essence of the contract and when a contract relates to a sale of immovable property, it will normally be presumed that time is not the essence of the contract.

12. That clause 9 of the apartment buyer agreement executed between the parties provides that the "estimated time of delivery" was subject to the other terms and conditions of the said agreement. Clause 9 of the said agreement is being reproduced hereunder:

*"The company based on the present plans and estimates contemplates to offer possession of the said Apartment to Allottee within a period of 36 months from the receipt of first instalment against allotment of the said Apartment plus a grace period of 6 months, unless there shall be delay or failure due to Force Majeure Conditions and due to failure of Apartment Allottee(s) to pay in time the total sale price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Apartment Allottee(s) to abide by the terms and conditions of this Agreement."*

Thus, delay in offering possession of the said apartment to the complainants was due to force majeure events and not due to willful negligence of the respondent. Respondent submits that it had never guaranteed or assured that





the possession will be offered within 36+6 months rather it merely contemplated about estimated time of possession. It is submitted that in real estate sector, there are various factors that affect the regular development of projects and as such no guarantee can be given to the allottees regarding offer of possession of the project. It is always subject to other terms and conditions as agreed upon in said agreement.

13. Respondent submits that a series of force majeure events took place during the period of development of the said project which are stated in detail hereunder:

- i. In the month of February, 2018, the respondent company had executed a purchase order to buy 216 metric tons of TMT Steel from M/s Fortune Metals Ltd. for the purpose of construction in the said project and gave two cheques towards advance payment. However, M/s Fortune Metals Ltd. only delivered 72.28 metric tons of steel and did not fulfil the remaining order,. Aggrieved by the same, respondent tried to contact the said supplier but neither the said order was completed, nor the money of respondent was refunded by the said supplier. Finding no alternative, the respondent approached the Hon'ble Delhi High Court vide Art. Pet. 147/2019 for appointment of an Arbitrator and vide order dated 05.04.2019, the Hon'ble Delhi High Court appointed a sole arbitrator for the purpose of adjudicating the claim of the respondent. During the arbitration proceedings, the respondent substantiated its claim with all



the necessary proofs and ultimately on 14.01.2020, an Arbitration Award was passed in favor of the respondent by the I.d. Arbitrator and the said supplier was directed to return the amount of the respondent along-with 12% interest. Due to the said non-supply of raw material and illegal forfeiture of respondent's money, the development at the said project was severely hampered and thus, the respondent despite its best efforts and reasonable diligence, could not complete the construction of the project within the estimated time and as such the same amounts to force majeure.

- ii. It is further submitted that the contract for the civil and structural work of the said project was given to M/s Bucon Infratech Pvt. Ltd. in the year 2016 for a total contract value of Rs.44,29,12,101/-. The work was to be completed within a period of 27 months, however, in the year 2018, dispute arose between the respondent company and the contractor over illegal demands being raised by the latter. Unfortunately, the construction work at the said project came to a complete halt due to which the respondent faced huge losses. Finding no alternative, the respondent had to engage another contractor to get the construction work of the said project completed. Thereafter, the said Contractor filed a Mediation Petition No. 284/2020 before the Hon'ble Delhi High Court but the said mediation failed as the respondent did not again agree to the illegal demands of the said contractor. Later, the said contractor filed a



Civil Suit (Commercial) bearing CS No. 147/2022 before the Hon'ble Delhi High Court for the recovery of his alleged outstanding amount.

On 13.10.2022, a consent decree was passed in the said case by the Hon'ble Delhi High Court on account of settlement between the parties.

Due to the said non completion of construction work by the main contractor of the said project, the development of the project got delayed and the respondent had to suffer huge losses. The said delay was beyond the control of the company and as such, amounts to force majeure.

- iii. Thereafter in the month of March, 2020, the whole country faced massive backlash due to Covid-19 pandemic when nationwide 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. iv. Further in the month of May, 2020, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of 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, Panchkula granted general extension for all the 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.





14. That the respondent is not in a position to give immediate possession of the said apartment to the complainant or per month interest till delivery of possession as it would stall the whole project and would hamper the interests of rest of the allottees. The said project of the respondent was highly undersubscribed due to which the respondent could not arrange adequate funds. As on 31.10.2023, out of the total saleable units i.e., 452 units (residential & commercial both), the respondent could sell only 159 units which is not even 50% of the total inventory. If in such circumstances, the respondent is directed to pay per month delay interest to the complainant till offering possession of the unit, the respondent would not be able to even complete the construction of the said project.

15. Further, construction work at the project is going on in full swing and in the most effective and efficient manner and respondent is ready to deliver the possession of the said project to its allottees as soon as the development work is completed. The respondent has been regularly sending the updates of the project to its allottees via email and has never backed out from its responsibilities of letting the allottees know the actual position of the said project.

16. The respondent company contemplated to offer possession of the said apartment within a period of thirty six plus six (36+6) months from the date of receipt of first installment, hence, the respondent never guaranteed or assured that the possession will be offered within said period rather the



respondent merely contemplated about the estimated time of possession. In real estate sector, there are various factors that affect the regular development of projects and as such no guarantee can be given to the allottees regarding the offer of possession of the project. It is further submitted that the said period of delivery of possession was subject to the other terms and conditions agreed upon in the said Agreement. It was clearly mentioned in the said agreement that the possession would be subject to force majeure conditions and the said project of the respondent has been heavily affected and delayed due to force majeure circumstances that were totally unforeseen and beyond the control of respondent.

17. Complainants had never made any objection to any of the clauses of the agreement and it is clear from the fact that the complainant has not placed on record the proof of any communication made to the representatives of the respondent company regarding the alleged unilateral terms in the said agreement.

18. Complainants defaulted in making payments on various occasions the respondent company had levied interest upon the late payments by the complainant and the complainant has paid the said interest. If there was no delay on the part of the complainants in making payments, then the complainants would have never paid delay interest upon the same.



19. During hearing, Id. counsel for respondent reiterated the submissions already pleaded in the reply filed by the respondent. Same are hence not reproduced for brevity.

#### **F. ISSUE FOR ADJUDICATION**

20. Whether the complainants are entitled to relief of possession along-with delay interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

#### **G. FINDINGS ON OBJECTION RAISED BY THE RESPONDENT**

##### **G.1 Objection raised by respondent that complainant is in breach of Agreement (ABA) for non-invocation of arbitration.**

The objection that has been taken by the respondent is that there exists an arbitration clause in the agreement and the complainant must invoke for arbitration proceedings in the present case before coming before the Authority. In this regard, Authority observes that 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 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 says 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. Further, the 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 the 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."*

Further, 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 of 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. Sunworld Residency*, 2022 SCC OnLine Del 4717 examined provisions that are "Pari Materia" to Section 89 of RERA Act; e.g. Section 60 of Competition act, Section 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, there is no bar under the RERA Act 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 judgements and considering the provisions of the Act, the Authority is of the view that complainant is 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 above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

#### **H. OBSERVATIONS OF THE AUTHORITY**

21.As per facts and circumstances, complainants had booked an apartment in the project of the respondent namely ‘Asha Panchkula’ situated at Sector-14, Panchkula Extension II, village Kot. on 30.03.2017. Upon booking, complainants were allotted apartment bearing no. B-0909 on the 9<sup>th</sup> floor in the said project. The total sale consideration of the apartment was fixed at ₹ 28,00,001/- against which the complainant had made a total payment of ₹ 24,37,606/-. An apartment buyer’s agreement was executed between the



parties on 08.06.2017. As per said agreement possession of the apartment was to be delivered within a period of 36 months from the date of receipt of first instalment against allotment of the said apartment plus grace period of 6 months from the date of the agreement. As per record, the first payment of instalment was made by the complainant on 30.03.2017 under the head-"within 30 days of allotment". Thus taking a period of 36 months plus 6 months grace period from the said date, the respondent was liable to deliver possession of the booked apartment by 30.09.2020.

22. It is a matter of fact that the respondent failed to deliver possession of the booked apartment to the complainants within the time period stipulated in the agreement. Respondent has attributed this delay to various force majeure circumstances such as unavailability of raw material amid pending dispute with the supplier; deficiency in services for the civil and structural work outsourced to an independent contractor and outbreak of Covid-19 pandemic.

The RERA Act, specifically Section 6, acknowledges force majeure events as circumstances beyond the control of the promoter that prevent project completion. As per Act, the expression "force majeure" means a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project (U/Section 6 of RERA Act 2016). General commercial difficulties such as financial



constraints, shortage of raw materials, or workforce unavailability do not qualify for relief under this clause, since they are seen as occupational risks on the part of the promoter. While *force majeure* is a legitimate defense, its misuse is a frequent point of litigation. Builders often attempt to classify generic commercial difficulties under this clause. The term "Force Majeure" is based on the concept of the doctrine of frustration under the Indian Contract Act, 1872: particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible or has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of **Alopi Parshad and Sons Ltd vs Union of India**, AIR 1960 SC 588 and the landmark **Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) - 2017 3 AWC 2692 SC**, the Supreme Court of India has categorically stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.





23. In the present complaint, respondent has cited non-availability of raw material (TMT Steel) and deficiency in service on the part of outsourced contractor as reasons for delay. Reasons such as dispute between respondent and its contractor/ suppliers are normal commercial difficulties being faced by promoters engaged in the business of real estate development. Such incidents are occupational risks which the promoter/developer is aware of at the time of launch of a real estate project. These instances do not present as a situation which is beyond the control of the respondent/promoter. Any dispute inter-se the respondent and third party shall not per-se push the timeline for delivery of project as agreed between complainant and respondent vide apartment buyer agreement dated 08.08.2016.
24. Further, another defence adopted by respondent is that the possession got delayed due to outbreak of Covid 19 pandemic. In this regard it is observed that Covid-19 pandemic hit construction activities post 22.03.2020 due to which construction work got halted throughout the country. In present complaint the respondent was duty bound to deliver possession of the booked apartment to the complainants within 36 months i.e by 30.03.2020 along with a six months grace period. The respondent has claimed that the Government had granted general extension of registration to respondent's project due to covid 19 in 2020 for 6 months w.c.f. March, 2020 and in 2021 for a period of 3 months due to the second wave of Covid 19 pandemic.



In this regard, Authority observes that respondent/ promoter as per clause 9 of the apartment buyer agreement, was duty bound to deliver possession to the complainant within a period of 36 months i.e by 30.03.2020 along with a grace period of 6 months, thus pushing the due date of delivery of possession to 30.09.2020. Further as per clause 19 of the said agreement; if an event of 'Force majeure' or serious social disturbances the delivery of performance of the obligation of delivery of possession is affected then the respondent shall be entitled to extension of time for performance of its obligation. Clause 19 of the apartment buyer agreement dated 08.06.2017 is reproduced below for reference:

*"If an event of Force Majeure (including severe natural disasters e.g, earthquakes, typhoons or flood) or serious social disturbances (e.g. wars, epidemics, terrorist attacks or civil disturbances etc.); or a law or statute promulgated by a competent department or authority of the Central Government or State Government which fundamentally frustrates this Agreement) occurs, the performance of the obligation affected by such event of Force Majeure can be suspended during the period of delay caused by the event of Force Majeure and can be automatically extended, without liability for breach of contract, for a period equal to such suspension. In such an event, the Company shall be entitled to reasonable extension of time for performance of its obligations under this Agreement. The Company shall also be entitled to modify such terms and conditions as may be required from time to time and such modified terms shall be binding on the Apartment Allottee."*



In this particular instance, the due date of delivery of possession arrived at 30.03.2020 which is merely 8 days after the Covid 19 pandemic hit the country. Meaning thereby that the construction works with regard to the apartment in question should have been near completion by that time. The respondent was thereafter entitled to a grace period of 6 months. The respondent is already being granted the benefit of grace period of six months beyond the period of 36 months, thus pushing the due date of delivery of possession to 30.09.2020 which is also inclusive of the relief period granted on account of Covid 19 pandemic. Thus, the due date of delivery of possession remains 30.09.2020. It is further pertinent to observe that till date the respondent is not in a position to deliver possession of the apartment to the complainants even after a lapse of more than 5 years from the offset of Covid 19 pandemic/ due date of possession. In this view, an adverse inference can be drawn that the apartment in question was nowhere near completion and far beyond the agreed timeline at the time when Covid 19 pandemic hit the country despite the respondent having received more than 90% of the total sale consideration by 28.05.2019 itself. Thus, in view of the foregoing observations no additional grace period is being granted to the respondent beyond what was agreed between the parties.


25. As per observations recorded in the preceding paragraph possession of the apartment should have been delivered to the complainants by 30.09.2020.





However, respondent failed to complete construction of the project and deliver possession within stipulated time. Now, even after a lapse of more than 5 years, respondent is not in a position to offer possession of the unit since respondent company is yet to receive occupation certificate in respect of the unit. Further, the respondent in its submissions written/oral has filed to provide a clear timeline as to when the possession of the booked apartment will be offered to the complainant.

The complainants in the captioned complaint do not wish to withdraw from the project and are ready to wait for delivery of possession of the apartment in question after receipt of occupation certificate. 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 apartment, the complainants are 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 complainants. So, the Authority hereby concludes that complainants are entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 30.09.2020 till a valid offer of possession is issued to the complainants. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The

A handwritten signature in blue ink, appearing to read 'Ramesh', is written over a horizontal line.

definition of term 'interest' is defined under Section 2(z) 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 (MCLR) 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..”*

26. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 09.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.
27. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the due date of possession i.e. 30.09.2020 till the date of a valid offer of possession.
28. Authority has got calculated the interest on total paid amount from due date of possession i.e. 30.09.2020 till the date of this order i.e. 09.12.2025 which works out to ₹ 13,74,573 /- and further monthly interest of ₹21,738 /- as per detail given in the table below:





Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 09.12.2025 (in ₹)
1.	24,37,606/-	30.09.2020	13,74,573/-
<b>Total:</b>	24,37,606/-		13,74,573/-
<b>Monthly Interest:</b>	24,37,606/-		21,738 /-

In the captioned complaint file, it was observed that the complainants had claimed to have paid an amount of ₹. 24,37,606/- to the respondent. However, in the file, the complainants had annexed receipts only for an amount of 18,50,868/- whereas for the remaining amount the complainants had annexed copies of cheque/bank slip without any proof of debit. Therefore, vide order dated 11.11.2025, the complainants were directed to file proper receipts. In pursuance of the same the complainants vide application dated 24.11.2025 have filed proof of payment/ debit for deficit amount. Thus the total amount paid by the complainants to the respondent works out to ₹. 24,37,606/- and the same is being taken for the purpose of calculation of interest.

#### I. DIRECTIONS OF THE AUTHORITY

29.Hence, 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 ₹13,74,573/- (till date of order i.e. 09.12.2025) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 21,738/- till the offer of possession after receipt of occupation certificate.
  - ii. Complainants will remain liable to pay balance consideration amount, if any, to the respondent at the time of offer of possession
  - iii. The respondent shall not charge anything from the complainants which is specifically not part of the agreement to sell.
30. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

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