



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

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|-------------------------------|--------------------|
| <b>Complaint No.:</b>         | <b>448 of 2024</b> |
| <b>Date of Filing:</b>        | <b>19.03.2024</b>  |
| <b>Date of First Hearing:</b> | <b>22.07.2024</b>  |
| <b>Date of Decision:</b>      | <b>20.02.2026</b>  |

Mr. Hari Chand S/o Sh. Ghashi Ram  
R/o H.no. 343, Pana Kala, VPO Kassar,  
Bahadurgarh, Jhajjar, Haryana-124507.

....COMPLAINANT

VERSUS

Gnex Realtech Pvt. Ltd.  
Essel House, B-10, Lawrence Road,  
Industrial Area, Delhi-110035.

....RESPONDENT

|                               |                    |
|-------------------------------|--------------------|
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**CORAM:** Sh. Chander Shekhar Member  
**Hearing:** 7<sup>th</sup>  
**Present: -** Mr. Hardeep Saini, Advocate, for the Complainant in both cases.  
Mr. Viren Sibal, Advocate, for the Respondent through VC in both cases.

**ORDER:**

The above captioned complaints are being taken up together for hearing because they each have similar issues and are related to the same project of the respondents, therefore the final order is being passed by taking facts of Complaint No. 448 of 2024 as the lead complaint.

2. The present complaints have been filed on 19.03.2024 by the complainants under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation and 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**

3. 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                                  | Asha Bahadurgarh Phase-III, Sec-36, Village Nuna Majra, Bahadurgarh, Jhajjar, Haryana   |
| 2.    | RERA registered/not registered                       | Registered vide Registration No. 292-2017 dated 12.10.2017  |
| 3.    | Details of Unit/Plot                                 | Plot No. E042, having an area of 110 sq. yards.   |
| 4.    | Date of Allotment                                    | 15.12.2017  |
| 5.    | Date of Agreement for Sale                           | 27.03.2018  |
| 6.    | Due Date of Offer of Possession                      | 14 Months (12 months+2 months) from the date of execution of the Agreement (As per Schedule-E of the Agreement for Sale dated 27.03.2018)   |
| 7.    | Possession Clause in Agreement for Sale (Schedule E) | <i>"The company shall make all efforts to complete the development and handover the possession of the said plot within twelve months plus two months grace period from the date of signing of this Agreement subject to Force Majeure, Court orders, Government policy/guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh project. If the completion of the said project is delayed due to the above conditions, then Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Plot for residential usage."</i> |
| 8.    | Total Sale Consideration                             | ₹18,57,600/-  |

|     |                                |              |
|-----|--------------------------------|--------------|
| 9.  | Amount Paid by the Complainant | ₹18,73,021/- |
| 10. | Offer of Possession            | 04.03.2024   |

## B. FACTS OF THE COMPLAINT

4. Facts of the lead Complaint No. 448 of 2024 are that the complainant had booked a plot in the project of the respondent namely; "Asha Bahadurgarh, Phase-III" situated at Sector-36, Bahadurgarh, District Jhajjar, by making payment of ₹1,87,000/- on 14.12.2017, following which allotment letter dated 15.12.2017 for plot no. E042, having an area 110 sq. yards was issued in favor of the complainant. The Agreement for sale was executed between the parties on 27.03.2018. As per the terms of Clause 8.1 read with Schedule-E of Agreement for Sale, the possession was supposed to be delivered within 14 months (12 months+2 months) from date of signing of the said Agreement.

5. The complainant has paid all installments strictly in accordance with the payment plan prescribed under Schedule B of the Agreement for Sale. The payment of ₹2,29,075/- due at the stage of sewer and electrical work was made before the due date i.e. on 28.09.2018, but the respondent illegally levied delay interest of ₹4,631/- despite there being no default on the part of the complainant. Thereafter, the complainant again paid ₹2,29,075/- on 09.01.2019 at the stage of WBM work and ₹4,63,271/- on

30.07.2019 at the stage of electric cable and road work. Although the respondent charged delay interest @12% per annum for alleged delayed installments, which is illegal and contrary to clause 10 of the Agreement, as the respondent itself was in default due to delay in construction, during which period no penal interest could be imposed upon the allottee.

6. As per the Agreement for Sale, the stipulated date for handing over possession was 27.05.2019, however, the respondent failed to deliver possession within the agreed time. In terms of Clause 8.6 of the Agreement, where the allottee does not intend to withdraw from the project, the respondent is liable to pay delay compensation at the rate prescribed under the rules, i.e. SBI's highest Marginal Cost of Lending Rate plus 2% per annum, for every month of delay till the handing over of possession. Despite repeated requests and visits by the complainant, the respondent failed to hand over the possession and only gave false assurances.

7. The complainant issued a legal notice-cum-demand notice dated 28.12.2023 seeking delay compensation by objecting to the illegal demand of penal interest and one-year advance maintenance charges; however, the respondent failed to reply. Subsequently, the respondent issued an offer of possession letter dated 04.03.2024 without adjusting the demand raised by the complainant in the legal notice cum demand notice sent by the complainant. As per the demand letter dated 11.12.2023, ₹1,34,616/- was

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demanded, against which the complainant paid ₹1,22,300/- on 13.03.2024, including the last basic instalment, IFMS charges and interest. The alleged balance interest was never demanded and is illegal.

8. The respondent has further illegally demanded one year advance maintenance charges @₹10/- per square yard, which is contrary to clause 12 of the Agreement, under which maintenance charges are payable only on a monthly basis. Till date, the complainant has paid a total sum of ₹18,73,021/- including amounts paid under protest, yet the respondent has failed to hand over lawful possession and execute the conveyance deed, thereby violating the Agreement for Sale and the provisions of the Real Estate (Regulation and Development) Act, 2016.

**C. RELIEF SOUGHT**

9. The complainant in his complaint has sought the following reliefs:-

- i. To direct the respondent to pay interest to the complainant for delay in handing over of the possession of the plot in question as per Real Estate (Regulation & Development) Act 2016 along with any amount the complainant is entitled to as per plot buyer's agreement in addition to relief claimed.

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ii. To direct the respondent to get the conveyance deed registered on the name of the complainant.

iii. To direct the respondent to refund of illegal interest charged by the respondent on delay payment.

iv. To direct the respondent not to charge any advance maintenance charges for one year and also not exorbitant charges for maintenance as the said maintenance charges are against the provisions of agreement to sell.

v. Any other relief which this Hon'ble Authority may deem fit in the present facts and circumstances may also be granted to the complainant for which he is found entitled.

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

10. Learned counsel for the respondent filed a detailed reply on 03.07.2025 pleading therein that the present complaint filed by the complainant is not admissible in the court of law as clause no. 34 of the Agreement for Sale clearly states a binding arbitration clause. Therefore, the Authority does not have jurisdiction to entertain the purported complaint as it has been specifically mentioned in the Agreement for Sale that all disputes shall be referred to an Arbitrator to be appointed as per provisions of Arbitration and Conciliation Act, 1996.

11. The complainant has failed to place on record the receipts of the payments made by the complainant to the respondent. The complainant has merely placed on record Statement of Account which is neither verified nor certified by the bank and the same is in violation of the provisions of the Banker's Book Evidence Act, 1891 and no reliance can be placed upon the same by this Authority.

12. The present complaint filed by the complainant is liable to be dismissed as the alleged delay in handing over of possession was because the project was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT on account of the environmental conditions, restriction on usage of ground water by the Hon'ble Punjab and Haryana High Court, demonetization, adverse effects of Covid-19 along with other force majeure circumstances. Further, the respondent was severely affected by the delay caused by the allottees in making payment/installments on time.

13. The complainant had opted for construction-linked payment plan, under which the complainant was required to pay the sale consideration in installments at various construction stages. However, the complainant defaulted in making timely payments towards the purchase of the said unit. The complainant breached his obligation to pay the installments as per the agreed payment schedule. Timely payment of the installments was the essence

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of the agreement and the respondent regularly demanded installments from the complainant which were payable according to the agreed payment plan before the offer of possession, however, the complainant breached his obligation to pay the said installments as per agreed payment schedule.

14. The present complaint is bad in the eyes of law as the complainant has failed to take possession of the said plot despite issuance of the Offer of possession dated 04.03.2024 as well as reminder letter dated 16.10.2024 issued to the complainant by the respondent for registration of conveyance deed. A copy of the said letters are annexed at Page no.17-20 of reply. The complainant has violated the terms and conditions of the Agreement for Sale and brought himself under a condition of default. Thus, the allotment of the said plot in favor of the complainant is liable to be cancelled/terminated. Sub-clause (iii), (iv) and (v) of clause 10.3 of the Agreement for Sale provides that;

*10.3 The Allotee shall be considered under a condition of default, on the occurrence of the following events:*

*(iii) Failure to take possession of the plot within the time stipulated by the Company;*

*(iv) Failure to execute conveyance deed within the time stipulated by the Company in its notice;*

*(v) Failure to execute Maintenance Agreement and/or to pay on or before its due date the maintenance charges, IFMS, deposits/charges for bulk supply of electrical energy or any increases in respect thereof, as demanded by the Company, its nominee, other body or association of allottees, as the case may be.*

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**E. REJOINDER FILED BY THE COMPLAINANT**

15. The complainant has filed rejoinder on 07.07.2025, whereby it is submitted that the complainant has annexed the statements of account along with the complaint and the same has been provided by the respondent from its own ledger. It means there is no point of verification or certification from the bank. It is relevant to mention here that the respondent itself admitted the payments of the complainant in its own demand letter and possession letter issued to the complainant and the same were already annexed with the complaint.

16. As per clause 12 of the agreement for sale, the maintenance charges will be payable on monthly basis and the respondent can't demand one year advance maintenance charges from the complainant. It is pertinent to mention here that the maintenance charges levied by the respondent are exorbitant and excessive. The respondent was demanding maintenance charges @ ₹10/- per sq. yd. which is exorbitant and illegal, one sided and unlawful. Even though the demand of delayed payment interest was also illegal and unlawful. The complainant has no other option except to make payment for taking over the possession. The respondent is also liable to refund the delay payment charges as per the facts and law mentioned above.

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17. It is denied that the complainant has failed to take possession of the said unit from the respondent company. It is relevant to mention here that on dated 20.03.2024, the complainant sent a reply to respondent's letter dated

04.03.2024 qua intimation for offer of possession, payments of outstanding dues and registration of conveyance deed where the complainant in his reply showed his readiness and willingness for registration of conveyance deed alongwith demand of delay possession interest but no reply for the same was received from the respondent. The copy of letter dated 20.03.2024 and whatsapp screenshots are annexed herewith as Annexure C-14. It is relevant to mention here that as per letter dated 16.10.2024 sent to the complainant by the respondent company qua reminder for registration of conveyance deed in which the respondent mentioned about the holding charges for not registering the conveyance deed on time but the fact is that the delay in handing over of possession and registration of conveyance deed is caused due to the default of the respondent. It is submitted here that if the respondent charges any holding charges in future, that demand will also be illegal.

18. It is submitted that the complainant was always ready for taking the possession and registration of conveyance deed but the respondent failed to handover the possession within the stipulated time as per the agreement. It is further submitted that the complainant already cleared all his outstanding dues in month of March 2024 and also personally approached the office of respondent for the registration of the conveyance deed but the respondent said that the possession and registration of conveyance deed will be done only when the complainant first withdraw his complaint before the authority.



**F. ARGUMENTS OF THE COMPLAINANT AND THE RESPONDENT**

19. During oral arguments, learned counsels appearing on behalf of both parties reiterated the submissions/arguments as already submitted in their complaint, reply and rejoinder respectively.

**G. ISSUES FOR ADJUDICATION**

20. Whether the complainant is entitled to get possession of booked plot alongwith delay interest in terms of Section 18 of RERA Act, 2016?

**H. OBSERVATIONS AND DECISION OF THE AUTHORITY**

21. The Authority has gone through the rival contentions. In the light of the background of the matter as captured in this order and also the arguments submitted by both parties, the Authority observes as follows:

- (i) With regard to the objection taken by respondent that the complaint is not maintainable in view of the Arbitration Clause 34 of the Agreement for Sale, it is observed that the presence of such a clause does not divest this Authority of the jurisdiction expressly conferred under the Real Estate (Regulation and Development) Act, 2016. The Hon'ble Supreme Court in *Imperia Structures Ltd. vs. Anil Patni (2020) SC 822*, held that statutory remedies under special legislations like RERA cannot be ousted by an arbitration clause. Accordingly, the

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Authority holds that it is competent to hear and decide the present matter and this objection of the respondent is rejected.

(ii) Admittedly, the complainant herein had booked the plot in respondent's project- 'Asha Bahadurgarh Phase-III, Sector-36, Bahadurgarh' by paying booking amount of ₹1,87,000/- on 14.12.2017. Following which allotment of plot no. E042 was issued in favour of the complainant on 15.12.2017. The Agreement for Sale was executed between the parties on 27.03.2018 and in terms of Clauses 8.1 and Schedule-E, the respondent was supposed to deliver the possession within fourteen(14) months from the signing of the Agreement for Sale i.e. by 27.05.2019.

(iii) As per letter of offer of possession dated 04.03.2024 and reminder dated 16.10.2024, the Completion Certificate dated 08.02.2024 had already been obtained by the respondent and after that it had issued an offer of possession to the complainant on 04.03.2024. The contents and language of the offer of possession clearly reveal that the complainant was duly given a valid and legal offer of possession. But it is not the case in hand where the respondent has offered the possession without completing the plot in question or without obtaining occupation/completion certificate. It is the complainant who did

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not come forward to accept it because the respondent did not adjust the amount raised by the complainant in the legal notice cum demand notice sent by the complainant to the respondent on 28.12.2023.

(iv) With regard to delayed possession interest, in the present case, the Authority observes that the complainant had paid ₹18,73,022/- against the total sale consideration of ₹18,57,600/-. The Agreement for Sale was executed between the parties on 27.03.2018 and the respondent was supposed to deliver the possession within fourteen(14) months from the signing of the Agreement for Sale i.e. by 27.05.2019. However, the respondent had issued a valid offer of possession to the complainant on 04.03.2024. Admittedly there has been an inordinate delay in delivery of 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 unit, the complainant is 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 given to the complainant.

(v) Now with regard to the period for which delay interest is admissible to the complainant, it is observed that the

complainant is entitled to delay interest on the entire paid amount i.e. from the deemed date of possession i.e. 27.05.2019 till the date of valid offer of possession i.e. 04.03.2024. 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 RERA 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”*

(vi) With regard to the prayer seeking refund of interest charged by the respondent on account of delayed payment, the Authority observes that the complainant admittedly made the payment after the stipulated due date. The interest was levied strictly in accordance with the terms of the Agreement to Sell, which expressly provide for charging interest in case of delayed payments. It is further noted that the complainant paid the said interest amount without raising any protest or objection. Having accepted the levied interest and making payment without protest, the complainant cannot subsequently seek refund of the same by alleging it to be illegal. In the absence of any material on record to show that the interest was charged in violation of the agreed contractual terms, the prayer for refund of interest is devoid of merit and is accordingly rejected.

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(vii) With regard to advance maintenance charges, the Authority observes that the respondent issued a demand letter dated 11.12.2023 which consists of one year advance maintenance charges to which the complainant protested by

relying on clause 12 of the Agreement to Sell which is reproduced below for reference:

*The Allottee shall enter into a separate maintenance agreement with the company or Maintenance Agency for the maintenance of the ASIHA-BAIADURGARII project by the association of allottees or the competent authority, as the case may be, upon issuance of the part completion certificate/completion certificate of the said project, as the case may be.*

*The allottee hereby agrees to pay the maintenance charges along with applicable taxes, cesses etc. to the company or the Maintenance Agency from the date of commencement of maintenance services by the company or the Maintenance Agency in the said project, whether the plot is physically occupied by the allottee or not. The Allottee hereby agrees to pay maintenance charges in respect of the said plot regularly on monthly basis as per the bills/invoices raised by the Company or such Maintenance Agency nominated by the Company. In case of non payment of maintenance charges within the time specified, the Allottee shall be liable to pay interest at the rate of 12% per annum. Non payment of maintenance charges shall also disentitle Allottee to the enjoyment of common services including electricity, water etc. in the said plot.*

 In view of Clause 12 of the Agreement to Sell, the Authority holds that the liability to pay maintenance charges arises only upon issuance of the part completion certificate/completion certificate and commencement of maintenance services. The said clause further stipulates that the

maintenance charges are payable on a monthly basis against bills/invoices raised by the company or the maintenance agency. In the present case, the completion certificate has been received on 08.02.2024 but the respondent raised the demand of maintenance charges on 11.12.2023 towards one year's advance maintenance charges, i.e. prior to the issuance of the completion certificate. Therefore, the demand of maintenance charges is contrary to the terms of the Agreement to Sell and is therefore rejected.

22. Considering the above facts, delay in handing over of the possession of the unit has been established. Hence, the Authority directs the 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 be 10.80% (8.80% + 2.00%) from the due date of possession till the date of valid offer of possession i.e. from 27.05.2019 to 04.03.2024.

 23. Authority has got calculated the interest on total paid amount from due date of possession or from the date of payments whichever is later till the date of valid offer of the possession as mentioned in the table below:

| TABLE I.1 |                    |  |   |   |
|-----------|--------------------|--|---|---|
| S.No      | Complaint Number   | Principal Amount in ₹  | Deemed date of possession or date of payment whichever is later | Interest Accrued till 04.03.2024 (in ₹) @ 10.80% p.a rate of interest |
| 1.        | HRERA-PKL-448-2024 | ₹12,87,450/-   | 27.05.2019  | ₹6,64,367/-   |
|           |                    | ₹4,63,271/-  | 30.07.2019  | ₹2,30,290/-   |
|           |                    |  |   | ₹8,94,657/-   |
| 2.        | HRERA-PKL-449-2024 | ₹12,87,899/-   | 27.05.2019  | ₹6,64,598/-   |
|           |                    | ₹4,63,271/-  | 30.07.2019  | ₹2,30,290/-   |
|           |                    |  |   | ₹8,94,888/-   |
|           |                    | <b>Total Payable to the Complainants = ₹17,89,545/-</b><br>(₹8,94,657/- + ₹8,94,888/-) |   |   |

24. Since the complainant paid a sum of ₹1,22,300/- on 13.03.2024 i.e. only after the offer of possession dated 04.03.2024, the said amount was not retained by the opposite party during the period of delay. Therefore, no delay interest is liable to be awarded on this amount, as it does not pertain to the delayed period and was deposited subsequent to the offer of possession.

#### I. DIRECTIONS OF THE AUTHORITY

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

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(i) The respondent is directed to hand over the physical possession of the plots to the complainants in both cases after payment of the delay interest of ₹17,89,545/- (₹8,94,657/- in Complaint no. 448 of 2024 + ₹8,94,888/- in Complaint no. 449 of 2024) as calculated by the Authority and execute conveyance deed within 90 days from the date of passing of this order.

(ii) The complainants are directed to take possession and to execute conveyance deed after making the due payments, if any, as per agreed terms and conditions of the Agreement for Sale.

(iii) The respondent shall not charge anything from the complainants which is not part of the agreement. If any amount is collected by the respondent in violation of the terms and conditions of the agreement, it shall be refunded to the complainants.

(iv) To balance the equities in the matter and in the interest of justice, the rights and liabilities of both parties are being freezed on the date of offer of possession i.e on 04.03.2024, therefore the parties are directed to settle the receivables and payables, if any, till the said date.

(v) A period of 90 days is given to both the parties to comply with the directions given in this order as provided in Rule 16 of

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Haryana Real Estate (Regulation and Development) Rules, 2017,  
failing which legal consequences would follow.

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

  
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(CHANDER SHEKHAR)  
MEMBER

20.02.2026  
Gaurav Saini  
(Law Associate)