



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	261 of 2023
Date of filing.:	07.02.2023
First date of hearing.:	21.03.2023
Date of decision.:	10.02.2026

1.Kamla Dalal d/o Sh. Sadhu Ram

2.Kashmir Singh Dalal s/o Sh. Lala Ram

Both R/o 86, Sector-06,

Bahadurgarh, Haryana, 124507

....COMPLAINANTS

VERSUS

Ruhil Promoters Private Limited

Office at Ruhil Residency, Sector-3,

Village Sarai, Aurangabad, Bahadurgarh,

District Jhajjar, Haryana

....RESPONDENT

Present: - Adv Jasdeep Singh, Learned counsel for the Complainant

Adv. Kamaljeet Dahiya and Adv. Navneet, Learned counsels for

the Respondent

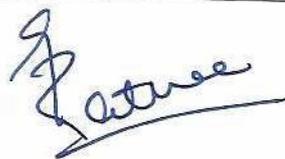
ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with relevant rules of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the 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, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Ruhil Residency, Sector-3, Bahadurgarh
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Registered vide Registration No. 139 of 2017
4.	Date of booking	12.03.2012
5	Dare of allotment	Not Available
4.	Date of apartment buyer agreement	23.05.2013



5.	Details of the unit.	A-104, 1st Floor, Tower A-4, 3BHK+3T area admeasuring 1708 sq. ft.
6.	Possession clause in BBA (Clause 9.i)	"Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs etc., the Developer proposes to complete the construction within a period of 36 months from the date of execution of this agreement with grace period of 180 days under normal circumstances."
7.	Due date of possession	23.11.2016
8.	Total sale consideration	₹ 41,81,100/-
9.	Amount paid by complainant	₹37,79,253/-
10.	Whether occupation certificate received or not.	Occupation certificate received on 17.03.2022
11.	Date of offer of possession	10.05.2022
12.	Date of Handing over possession/Possession certificate	14.02.2024

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

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3. Complainants had booked a unit bearing no. A-104, 1st Floor, Tower A-4, Type 3 BHK+ 3T admeasuring 1708 sq. ft. in the project of the respondent namely, "Ruhil Residency", situated at Sector-3, Bahadurgarh, on 12.03.2012 by paying a booking amount of ₹ 3,50,000/-.
4. It is submitted that an apartment buyer agreement was executed between the parties on 23.05.2013 qua the said unit. The total sale consideration of the unit was fixed as ₹ 41,81,100/- against which the complainants had paid an amount of ₹37,79,253/- till date. As per clause 9(i) of the agreement, respondent had committed to deliver possession of the unit within 36 months along with a grace period of 180 days i.e, 42 months from the date of execution of the agreement, which comes to 23.11.2016.
5. It is submitted that the complainant has adhered to the terms of the agreement and not even a single default was committed by the complainant in making payment of instalments. The complainant has already paid almost more than 85% of the total sale consideration of the apartment.
6. The respondent was supposed to deliver possession of the booked apartment by 23.11.2016, however the respondent miserably failed to complete construction of the project and deliver possession in a time bound manner. Rather the respondent company had issued a demand letter dated 27.12.2022 whereby along with other demands, the respondent company had demanded an illegal amount of ₹3,00,000/- on account of additional staircase which was never the part of agreement.


R. K. Rawat

7. That further as on date the building is not complete, construction quality is not upto the mark and common areas are not properly managed and still a lot of work is pending on the part of the respondent. A copy of latest photos of the incomplete project is annexed as **Annexure-C14**.
8. That the respondent, despite taking money, has not handed over possession of the unit even after a lapse of more than 9 years from the due date of possession; hence present complaint has been filed seeking possession of the apartment along with interest from the due date of possession till actual handing over of physical possession.

C. RELIEF SOUGHT

9. In view of the facts mentioned above, the complainants pray for the following reliefs):-
- i. Direct the respondent to hand over physical possession of the above-mentioned unit to the complainants, complete in all respects, along with all amenities, fittings and fixtures, strictly in accordance with the terms of the Agreement.
 - ii. Direct the respondent to pay delay interest as prescribed under the Act for the period during which the respondent failed to hand over the physical possession of the unit to the complainant.

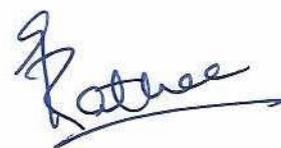


- iii. Direct the respondent to execute the conveyance deed/sale deed in favour of the complainant in respect of the above-mentioned unit, in accordance with law.
- iv. Direct the respondent to bear the expenses towards the staircase, which was never a part of the Agreement, and since the said charges have arisen due to the default of the respondent, the same are liable to be paid by the respondent itself.
- v. Direct the respondent/builder not to levy or charge any interest in the form of holding charges or otherwise on the amount payable by the complainant, especially when as on date more than 85% of the total sale consideration has already been paid by the complainant.
- vi. Pass any other order(s) or grant such further relief(s) as this Hon'ble Authority/Court may deem fit and proper in the facts and circumstances of the present case, in favour of the complainant and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 18.05.2023 pleading therein:

10. That the complainant had booked a unit in the project of the respondent namely 'RUHIL RESIDENCY' situated at Sector-3, Sarai Aurangabad Village, Bahadurgarh, Distt. Jhajjar, Haryana-124507. Complainant was allotted



apartment no. A-104, situated at 1st Floor in Block no. A-4 admeasuring super area 1708 sq. ft.

11. That the construction of the entire project has been completed and the occupation certificate has also been issued from the concerned department. The occupation certificate for the project in question has been received on 17.03.2022. of payment of interest for said period must not be put on the respondent.

12. That there was delay in construction of the project because of some circumstances which were beyond the control of the respondents. As per clause 9(vii) of the agreement, if there is delay due to reasons beyond the control of the developer then the allottee(s) do not have any right to claim the compensation of whatsoever nature. Moreover, the complainant himself agreed upon the terms of the agreement and also gave his full consent over such terms. For case, clause 9(vii) is reproduced herein below:

"The developer as a result of such contingency arising reserves the right to alter or vary the terms and conditions of this agreement or if the circumstances beyond the control of the developer so warrant, the developer may suspend /abandon the project or any of its part for such period as it may consider expedient and the Allottee(s) agrees not to claim compensation of any nature whatsoever including the compensation stipulated in clause 9(iii) of this agreement during the period of suspension of the scheme".

13. That the construction of the said apartment is complete and the respondent is ready to give the possession as the Occupation Certificate from the concerned



department has been issued. It is further submitted that despite force majeure situations which were beyond the control, respondents were able to complete the apartment.

14. That after receipt of occupation certificate, communications regarding possession and outstanding dues were sent on 10.05.2022. Despite these repeated communications, the complainants failed to respond. However, complainant at the time of filing of the complaint concealed this fact and only placed on record the demand letter dated 27.12.2022.

15. The respondent had completed the project despite non-payment by the complainant and several other allottees like her. The complainant was informed of the completion of the project and receipt of occupation certificate and also requested to clear the payment due against their unit, but complainants never turned to clear the outstanding against her unit nor came forward to take possession.

16. That the complainants have not approached the Hon'ble Authority with clean hands and had not disclosed that the possession had already been offered to him in the year 2022 and the complainant has not come forward either to clear the outstanding amount or to take possession of the unit in question .

17. It is submitted that the demand on account of staircase charges is raised as per the terms of apartment buyer agreement executed between the parties. The changes made to the building were necessitated by an update in the Fire Code of Haryana in 2017. It was specifically mandated by the Fire department that a



staircase must be added to the building in order to obtain NOC. The changes made to the building were not due to any structural defect but solely due the need arisen in response to the update in the Fire Code of Haryana 2017.

18. It is submitted that the respondent had issued a valid offer of possession on 10.05.2022, however, the complainants denied to take possession of the apartment without any substantive reason and hence, the complainants are liable for breach of provision of Section 19(6), 19(7) and 19(10) of the RE(R&D) Act 2016 and is accordingly, liable to pay interest and holding charges for delay in making payments.

E. REJOINDER TO REPLY FILED BY THE RESPONDENT

19. The subject unit was booked on 12.03.2012 and the apartment buyer's agreement was executed on 23.05.2013 after a delay of more than one year. Within a year of execution of the agreement, the complainants had already paid approximately 70% of the total sale consideration. As per the agreement, possession was to be delivered within 36 months i.e., by 23.05.2016. The respondent failed to honour this timeline.

20. The complainant made all payments regularly, as reflected in the statement of account annexed with the complaint. Only the final instalment, contractually payable at the time of a valid offer of possession, remains outstanding.

21. That no such offer of possession dated 10.05.2022 has ever been made to the complainants by the respondent. The complainants have all the time requested



the respondent to deliver possession of the unit with such fittings and fixtures as mentioned in Annexure C of the agreement.

22. Despite being in default, the respondent arbitrarily raised an additional demand of ₹3,00,000/- under the guise of staircase charges, without any contractual basis, justification, or calculation. Such demand is ex facie illegal and amounts to unfair trade practice.

23. The respondent has admitted that the Occupation Certificate was applied for and obtained much after the agreed date of possession, finally being issued only in the year 2022. The respondent has also failed to place on record a valid Fire NOC, despite claiming the same.

F. ARGUMENTS OF BOTH THE LEARNED COUNSEL

24. During the course of arguments, both parties reiterated the written pleadings. Further the complainant's counsel was enquired with regard to offer of possession letter dated 10.05.2022 issued by the respondent. Learned counsel for the complainants replied that the said letter was never received by the complainants and also there is no postal receipt/proof of delivery attached along with them.

G. ISSUES FOR ADJUDICATION

25. Whether the complainants are entitled to relief of delayed possession charges along with interest?



26. Whether the complainants are liable to pay staircase charges and holding charges?

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

27. As per the facts and circumstances, the complainants had booked a unit in the project of the respondent, namely, "Ruhil Residency", situated at Sector-3, Bahadurgarh on 12.03.2012 by paying a booking amount of ₹ 3,50,000/-. Complainants were allotted a unit bearing no. A-104, 1st Floor at Tower A-4, having a super built up area of 1708 sq. ft in the said project. An apartment buyer agreement was executed between the parties on 23.05.2013. The total sale consideration of the unit was fixed as ₹ 41,81,100/- against which the complainants, admittedly, have paid an amount of ₹ 37,79,253/- till date. It is the submission of the complainants' that the respondent has delayed the delivery of possession beyond the stipulated period of time.

28. Authority observes that as per clause 9(i) of the apartment buyer agreement executed between the parties, possession of the apartment should have been delivered by 23.11.2016. However, the respondent has failed to deliver possession of the booked apartment within the stipulated time period. Respondent has attributed this delay in the delivery of possession to force majeure conditions. However, in its reply/oral submissions, the respondent has failed to elaborate as to the conditions which created force majeure circumstances in the construction of the said project. Hence, the



pleas/grounds taken by the respondent to plead the force majeure condition are unaccounted. Respondent cannot be allowed to take advantage of the delay caused in the delivery of the project due to its own account, and hence, the claim of the respondent is rejected.

29. As observed earlier, the possession of the unit in question should have been delivered to the complainant by 23.11.2016. However, the respondent delayed delivery of possession beyond stipulated time. The respondent in its reply has submitted that a letter dated 10.05.2022 had been issued to the complainants intimating concerning receipt of occupation certificate and offer of possession and further asking the complainants were asked to visit the office of the respondent to clear outstanding dues and to take over possession; however, the complainants failed to come forward and take delivery of possession after payment of the outstanding amount.

On the other hand, learned counsel for the complainants has denied the receipt of the offer of possession letter dated 10.05.2022, stating that the same was never served upon the complainants.

30. In view of the rival contentions of both parties, it is observed that a valid offer of possession is a formal intimation on the part of respondent communicating to the complainants that the unit is ready/habitable for possession. It forms the beginning of the process of handing over possession. A valid offer of possession constitutes intimation regarding status of unit, status of receipt of

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occupation certificate and balance payables and receivables amount in respect of the unit for which possession has been offered to ensure a smooth hand over of possession of the unit. In present complaint, the respondent vide letter dated 10.05.2022 had communicated to the complainants with regard to receipt of occupation certificate and offered possession of the unit in question alongwith the pending dues in respect of the unit in question. Though the offer of possession dated 10.05.2022 is a valid offer of possession, however, the respondent has failed to prove that this offer of possession was duly served upon the complainant. The respondent vide application dated 04.11.2024 has placed on record a courier receipt dated 10.05.2022 as proof of service. In this respect it is observed that the courier receipt dated 10.05.2022 is from a private sender and further without any sender's signature/seal, hence the same cannot be relied upon. Therefore, in absence proof of delivery of letter dated 10.05.2022 same cannot be presumed to have been served upon the complainants. Further, the complainants in the complaint file have annexed a demand letter dated 27.12.2022 however, the same is without any intimation with regard to offer of possession. Nevertheless, vide application dated 07.05.2025, respondent has placed on record a possession certificate along with certificate of acknowledgement of possession dated 14.02.2024 in the Authority. Complainants have not filed any rebuttal to the same, also the possession certificate bears the signature of the complainants. Hence, possession was handed over to complainants on 14.02.2024. It is also matter of

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record that as per clause 9(i) of the agreement it was an obligation on the respondent to hand over the possession of the unit by 23.11.2016 and for any delay beyond that respondent after coming into force of Real Estate (Regulation & Development) Act, 2016 is liable to pay delay interest in terms of Section 18 read with Rule 15 of Haryana Real Estate (Regulation & Development) Rules, 2017. However, possession was offered to complainants on 14.02.2024 i.e. after lapse of more than seven years. Hence, complainants are entitled to delay possession interest from the period 23.11.2016, i.e., due date of possession till the date handover of possession as mentioned in the possession certificate i.e. 14.02.2024. 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;

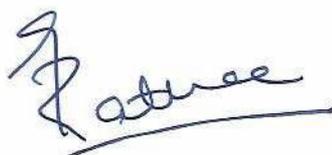
Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:



“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”

31. 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 of order i.e., 10.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.
32. 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 on date 10.02.2026 works out to 10.80% from the due date of possession i.e. 23.11.2016 till the date of handing over of possession i.e 14.02.2024.
33. Authority has got calculated the interest on total paid amount from due date of possession or date of payment (whichever is later) and same is depicted in the table below:



Sr. No.	Principal Amount (in ₹)	Due date of possession/Date of Payment	Interest accrued till handing over of possession i.e 14.02.2024 (in ₹)
1.	37,47,587/-	23.11.2016	29,27,430/-
2.	31,666/-	10.05.2022	6,053/-
Total: 37,79,753/-			29,33,483/-

34. With regard to staircase charges it is observed by the Authority that charges raised under 'staircase charges' are for construction of additional staircase for emergency fire safety as per directions by Fire Safety Department. Since the demand on account of staircase charges has been proportionately charged from the complainants, therefore the complainants are liable to pay the same. Authority in complaint no. 607 of 2018 titled as 'Vivek Kadyan Vs TDI Infrastructure Ltd.' has already laid down the principle for calculation of fire exit stair case.

35. With regard to execution of conveyance deed, Authority is of the considered view that there is no impediment on execution of conveyance deed in favour of an allottee when allottee pays the full consideration and gets the possession. After this stage, execution of conveyance deed is nothing but updating of records in respect of transfer of property. Accordingly, respondent promoter is obligated/duty bound u/s 17 of the RERA Act, 2016 to execute a registered conveyance deed in favor of the complainant.

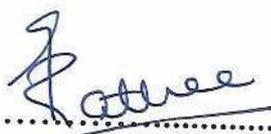


G. DIRECTIONS OF THE AUTHORITY

38. 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 ₹ 29,33,483/- to the complainants towards delay already caused in handing over the possession.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.
- iii. Complainants shall remain liable to pay the amount as observed in para 34 of this order.
- iv. Respondent shall execute the conveyance deed in favour of the complainants within 30 days from date of this order.

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]