



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	807 of 2023
Date of filing.:	11.04.2023
First date of hearing.:	18.05.2023
Date of decision.:	10.02.2026

1. Joginder Singh S/o Sh. Om Prakash

2. Jyoti Gulias W/o Sh. Joginder Singh

Both R/o Village Dariyapur, PO Badli, Tehsil Bahadurgarh

Dstt. Jhajjar Haryana, 124105

....COMPLAINANTS

VERSUS

Ruhil Promoters Private Limited

(Through its Managing Director, Earlier Known as

M/s Kashi Promoters Pvt Ltd)

Regd Office at Khasra No. 28/23, Bhagya Vihar,

Madanpur Dabas, Opposite Hiralal Public School,

New Delhi-110081

Site Officer: Ruhil Residency, Sector-3,

Village Sarai, Aurangabad, Bahadurgarh,

District Jhajjar, Haryana

....RESPONDENT

Present: - Adv Parveen Gupta, 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

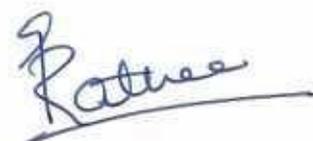


3.	RERA Registered/not registered	Registered vide Registration No. 139 of 2017
4.	Date of booking	03.12.2012
5	Date of allotment	03.12.2012
4.	Date of apartment buyer agreement	04.12.2012
5.	Details of the unit.	I-802, 8th Floor, Tower 1, 2BHK area admeasuring 1240 sq. ft.
6.	Possession clause in BBA (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	04.06.2016
8.	Total sale consideration	₹ 30,20,000/-
9.	Amount paid by complainant	₹27,47,514/-
10.	Whether occupation certificate received or not.	Occupation certificate received on 17.03.2022
11.	Date of offer of possession	08.07.2022

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B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Complainants were allotted a unit bearing no. I-802, 8th Floor, Tower 1, 2BHK area admeasuring 1240 sq. ft. in the project of the respondent namely, "Ruhil Residency", situated at Sector-3, Bahadurgarh, vide allotment letter dated 03.12.2012 after paying a booking amount of ₹ 5,36,064/-.
4. It is submitted that an apartment buyer agreement was executed between the parties on 04.12.2012 qua the said unit. The total sale consideration of the unit was fixed as ₹ 30,20,000/- against which the complainants had paid an amount of ₹27,47,514/- 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 04.06.2016
5. It is submitted that the complainants have adhered to the terms of the agreement and not even a single default was committed by the complainant in making payment of instalments. The complainants took a loan of ₹ 18.50 Lakhs from LIC Housing & Finance Ltd. for making payment towards the due instalments. The complainants have already paid more than 90% of the total sale consideration of the apartment to the respondent by the year 2016 itself.
6. The respondent was supposed to deliver possession of the booked apartment by 04.06.2016, however the respondent miserably failed to complete construction of the project and deliver possession in a time bound manner. The



complainants had been relentlessly pursuing the respondent seeking possession of the unit in question.

7. Vide letter dated 08.07.2022 the respondent issued an offer of possession along with additional demand of ₹ 8,26,648/-. It was also intimated that the project has received occupation certificate on 17.03.2022. The said offer of possession was made after a lapse of 7 years and without adjudicating delayed possession interest. Further the respondent had unilaterally increased the cost of the unit to ₹ 35,45,290/-. The increased cost of the unit was on account of the illegal demand of amount of ₹3,36,000/- on account of additional staircase charges and ₹ 43,896/- maintenance charges which was never the part of agreement.
8. 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. The amenities that are missing are the Club House, modular Kitchen, sanitary fitting, electrical fittings and earmarked car parking space. In absence of above mentioned amenities, the offer of possession dated 08.07.2022 was a invalid offer.
9. That the respondent, despite taking money, has not handed over a valid possession of the unit even after a lapse of more than 8 years from the due date of possession; hence present complaint has been filed seeking possession of the unit along with interest from the due date of possession till actual handing over of physical possession.



C. RELIEF SOUGHT

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

- i. Direct the respondent to issue revised offer of possession letter after allowing compensation for the delay caused in delivery of possession.
- ii. Direct the respondent to refund ₹ 40,000/- charged for the Club House.
- iii. Direct the respondent to pay compensation of ₹ 1 lakh for the missing store room.
- iv. Direct the respondent to withdraw the demand for payment of ₹ 95,362/- as penal interest as no instalment has been delayed.
- v. Direct the respondent to refund the expenses towards the staircase, which was never a part of the Agreement.
- vi. Direct the respondent/builder to handover the physical possession of the unit in question along with compensation for delay and missing amenities.
- vii. Direct the respondent to pay litigation expenses of ₹ 50,000/- and compensation for mental harassment amounting to ₹ 1 lakh.
- viii. 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.



13. That the respondent had completed the project in the year 2020 and thereafter filed an application for grant of occupation certificate on 13.01.2020 with the concerned department, which was kept pending with the department and also got delayed due to Covid-19 situation as national lockdown was announced in the entire country. On 17.03.2022, occupation certificate was received by respondent from the concerned department. Respondent submitted that force majeure on account of Covid-19 outbreak be taken into consideration for relaxation as Covid-19 outbreak lead to delay in handing over of possession. Hence, period from 13.01.2020 to 17.03.2022 be considered as force majeure and the burden of payment of interest for said period must not be put on the respondent. The Authority had also considered the period from 25.03.2020 till 24.09.2020 as force majeure and granted relief/extension in compliance of various provisions of RERA Act, 2016 and Rules 2017. Further special extension of three more months has also been granted due to second wave of COVID-19. As such respondent is also entitled for benefit of such force majeure period and should be exempted from charge of delay interest from 13.01.2020 to 17.03.2022.

14. 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 ease, 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".

15. 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. The project is complete in all respects as is credence from the report of Ld. Local Commissioner that was submitted in Complaint No. 413/2022.

16. That the complainant stopped making payment against his apartment after 2014, much before the due date of possession, the last payment being made against the installment that was due on 20.05.2014 and had not turned to clear the outstanding against her till date. The complainant then paid the next amount in 2016 after the lapse of approximately 2 years and that too after so many requests and demands of respondent. 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 her unit, but complainant never turned to clear the outstanding against her unit nor came forward to take possession.

17. That the complainant has not approached the Hon'ble Authority with clean hands and had not disclosed that the possession had already been offered to him vide offer of possession letter dated 13.05.2022 alongwith outstanding due. The complainant was requested to make payment of the outstanding amount and take physical possession of the unit. However, the complainants failed to do so for reasons best known to them.

18. It is submitted that the complainants are seeking refund of club charges, staircase charges, maintenance charges in the instant complaint which is not tenable as the said charges were raised as per the terms of apartment buyer agreement executed between the parties.

19. It is submitted that the complainant denied to take possession of the apartment without any substantive reason hence, the complainant is 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.

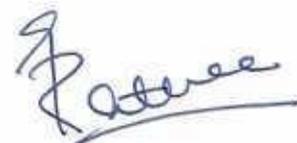


E. REJOINDER TO REPLY FILED BY THE RESPONDENT

20. The subject unit was booked on 03.12.2012 and the apartment buyer's agreement was executed on 04.12.2012 after a delay of more than one year. As per the agreement, possession was to be delivered within 36 months i.e., by 04.06.2016. The respondent failed to honour this timeline.
21. The complainants 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.
22. That the offer of possession letter dated 08.07.2022 was an incomplete offer as the respondent did not allow the compensation on account of delay caused in delivery of possession. That on receipt of said offer, the complainants visited the site of the project and found that the apartment was incomplete with numerous deficiencies.
23. The complainants are ready to take possession of the unit provided the respondent be asked to complete the unit and pay delayed possession interest.

F. ARGUMENTS OF BOTH THE LEARNED COUNSEL

24. During the course of arguments, learned counsel for the complainants submitted that after a delay of more than 7 years from the due date, the respondent issued an offer of possession to the complainants on 08.07.2022. Along with said offer of possession respondent had issued a demand letter



raising a further illegal demand of ₹ 8,26,648/-. Out of this demand the complainants are not liable to pay demand raised on account of staircase charges, maintenance charges, club charges and charges on account of delayed payment as the complainants have not once defaulted in making these payments.

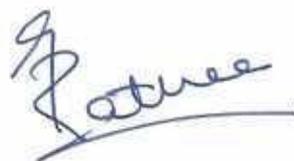
On the other hand, learned counsel for the respondent rebutted that after receipt of occupation certificate, the respondent had issued a valid offer of possession to the complainant on 08.07.2022, however the complainants failed to take delivery of possession and has been causing further delay ever since which is in violation of provisions under Section 19(6) and 19(7) of the RERA Act, 2016.

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, maintenance charges and club charges?

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

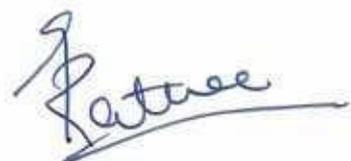
27. As per the facts and circumstances, the complainants had booked a unit in the project of the respondent, namely, "Ruhil Residency", situated at Sector-3, Bahadurgarh on 03.12.2012 by paying a booking amount of ₹ 5,36,064/-.



Complainants were allotted a unit bearing no. I-802, 8th Floor, Tower I, 2BHK area admeasuring 1240 sq. ft. in the said project. An apartment buyer agreement was executed between the parties on 04.12.2012. The total sale consideration of the unit was fixed as ₹30,20,000/- against which the complainants, admittedly, have paid an amount of ₹ 27,47,514/- 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 04.06.2016. However, the respondent has failed to deliver possession of the booked apartment within the stipulated time period. Respondent has attributed this delay in delivery of possession to force majeure conditions on account of COVID outbreak.

In this regard it is observed that the possession of the apartment in question became due on 04.06.2016. It is a matter of fact that COVID-19 outbreak hit construction activities post 22nd March 2020 i.e more than three years after the due date of possession. The possession of the apartment had already been delayed for a long period of time even before the COVID-19 halted construction. The respondent had failed to construct the project on time and deliver possession to the complainant. Therefore, as far as delay in delivery of possession of the unit in question is concerned, respondent cannot be



allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as "*M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.S 3696-3697/2020*" dated 29.05.2020, wherein Hon'ble High Court has observed that:

"69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself."

Therefore, as far as delay in delivery of possession of the unit in question is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition.



Respondent has also cited departmental delay in issuing occupation certificate as a force majeure condition. In this regard, it is observed that respondent had committed to deliver the possession of the unit by 04.06.2016, meaning thereby that respondent should have applied and obtained occupation certificate by 04.06.2016, however, as per record, the respondent had applied for issuance of occupation certificate on 13.01.2020 i.e., after lapse more of the 3 years from the stipulated time and thereafter the same was issued on 17.03.2022.

Furthermore, respondent has taken a defense that the period for which the occupation certificate was pending before the Competent Authority be excluded for the delayed period as the delay in issuance of occupation certificate is attributable to the competent authority and not the respondent. There is no document on record to show that the application for occupation certificate was complete as in all aspects and there was no deficiency in the application that was conveyed to them. Moreover, the Authority has already included the grace period of 180 days as provided in the agreement to sale while computing the due date of possession. No case for further concession is made out.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the due date of possession had already passed and the delivery of possession had been long due. Respondent cannot



be allowed to take advantage of delay caused in delivery of 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 04.06.2016. However, the respondent delayed delivery of possession beyond stipulated time. The respondent in its reply has submitted that a letter dated 13.05.2022 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, the complainants have annexed an offer of possession letter dated 08.07.2022 along with demand letter conveying outstanding demands and receipt of occupation certificate.

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 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 13.05.2022 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 13.05.2022 is a valid offer of possession, however, the respondent has failed to prove that this offer of possession was duly served upon the complainant. Nevertheless, the complainants in their complaint file have placed on record offer of possession letter dated 08.07.2022. This offer of possession has been refuted by the complainants on grounds that the respondent has failed to complete the unit in question and there are numerous deficiencies. In this regard it is observed that the offer of possession dated 08.07.2022 had been issued after receipt of occupation certificate. The deficiencies elaborated by the complainants are with regard to minor repair works/ absence of promised facilities/amenities at the site of the project. Such deficiency does not cause harm to the habitability of the unit in question. There was no impediment for the complainants in having accepted the same. Further for the deficiency in services the complainants had ready remedy available as per law before the Adjudicating Officer for seeking the relief of compensation u/s 18(3) of RERA Act 2016.



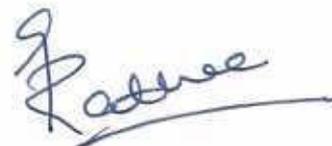
31. The facts set out in preceding paragraphs demonstrate that the possession of the unit should have been handed over to the complainants by 04.06.2016. However, possession of the unit was delayed beyond the stipulated period. A valid offer of possession was issued to the complainants on 08.07.2022 after receipt of occupation certificate. Since, the complainants wish to take possession, therefore, as per Section 18(1) of the Act, the complainants become entitled to receive "delay interest" from the due date of possession i.e., 04.06.2016 till the date a valid offer of possession was issued to the complainants i.e., 08.07.2022. Authority, hereby, concludes that the complainants are entitled for the delay interest from the due date i.e., 04.06.2016 till the date on which a legally valid offer of possession was made i.e., 08.07.2022. 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;

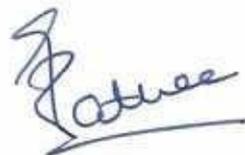
Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“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”

32. 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%.

33. 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. 04.06.2016 till the date of handing over of possession i.e 08.07.2022.



34. 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 08.07.2022(in ₹)
1.	26,37,108/-	04.06.2016	17,36,937/-
2.	1,10,406/-	22.07.2016	71,151/-
Total: 27,47,514/-			18,08,088/-

35. 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.

36. The complainant has also alleged that the respondent has charged maintenance charges which are unjust and illegal. With regard to maintenance charges, it is observed that according to clause I(viii) of the apartment buyer agreement, the complainant has agreed to pay demand raised on account of maintenance



charges, therefore the complainant is liable to pay the same. As per clause 11(iii) of the apartment buyer agreement, the date of commencement of maintenance shall be intimated by the developer to the allottees and the maintenance charges will be reckoned from that date.

37. In addition to aforesaid grievances, complainants have also stated that respondent has miserably failed provide the amenities, fitting and fixture as per agreement. In this regard complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation u/s 18(3) of RERA Act 2016.

G. DIRECTIONS OF THE AUTHORITY

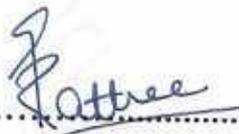
38. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to pay upfront delay interest of ₹ 18,08,088/- 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 35 & 36 of this order.
- iv. Complainants shall remain liable to pay balance sale consideration, if any, and accept the physical possession of the unit within 30 days of uploading 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]