



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2587 of 2022
Date of filing.:	18.10.2022
First date of hearing.:	21.12.2022
Date of decision.:	28.04.2026

Jai Singh Dalal S/o Udai Singh Dalal
R/o VPO Mandauthi, Bahadurgarh,
District Jhajjar,
Haryana

....COMPLAINANT

VERSUS

1. Ruhil Promoters Private Limited
Office at Ruhil Residency, Sector-3,
Village Sarai, Aurangabad, Bahadurgarh,
District Jhajjar, Haryana
2. Kashi Promoters Private Limited
Through its Principal Officer
% A-348, MeeraBagh,
Main Outer Ring Road,
New Delhi
Pin 110087

....RESPONDENT

Present: - None for the Complainant
Adv. Kamaljeet Dahiya, Learned counsel for the Respondent
through video conference

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with 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. apartment 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 Apartment Buyer Agreement	12.12.2012
5.	Details of the apartment.	Apartment no. C-301, Block/Tower C-1, 3BHK+3T, situated at 3rd floor measuring super area of 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	12.06.2016
8.	Total sale consideration	₹ 49,00,168/-
9.	Amount paid by complainant	₹ 44,34,238/-
10.	Whether occupation certificate received or not.	Occupation certificate received on 17.03.2022
11.	Date of offer of possession	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Complainant had booked an apartment bearing no.C-301, Block/Tower C-1, 3BHK+3T, situated at 3rd floor measuring super area of 1708 sq. ft. in the project of the respondent namely, "Ruhil Residency", situated at Sector-3, Bahadurgarh in the year 2012. An allotment letter qua the said apartment was issued to the complainant on 23.11.2012.
4. It is submitted that an apartment buyer agreement was executed between the parties on 12.12.2012 qua the said apartment. The total sale consideration of



the apartment was fixed as ₹49,00,168/- against which the complainant has paid an amount of ₹44,34,244/- till date. As per clause 9(i) of the agreement, respondent had committed to deliver possession of the apartment 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 12.06.2016

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 90% of the total sale consideration of the apartment.
6. The respondent was supposed to deliver possession of the booked apartment by 12.06.2016, however the respondent miserably failed to complete construction of the project and deliver possession in a time bound manner.
7. That the complainant visited the site and came to know that there was no construction at all and all the promises of handing over the possession by June 2016 were false. The complainant even met the representatives of the respondent many times to know the exact status of the project but the representatives always falsely claimed that the possession will be handed over soon and the complainant whose hard earned money was lying with the respondent was left with no other option except to wait for the possession.
8. The respondent company had demanded an illegal amount of ₹ 3,00,000/- on account of additional staircase. In this regard it is submitted that the additional staircase had to be installed by the respondent due to its own default as the



respondent had failed to take necessary permissions from the fire department before start of construction.

9. The respondent promoter is illegally demanding the high maintenance charges at the rate of ₹ 2.5/ sq. ft. without even handing over possession of the apartment in question.

10. That the respondent despite taking money has not handed over the possession of the apartment despite lapse of more than nine years from the due date of possession; hence present complaint.

C. RELIEF SOUGHT

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

- i. Direct the respondent to refund the principal amount of ₹44,34,244/- along with interest till actual realization.
- ii. Direct the respondent not to charge 18% interest over delayed payments.
- iii. Direct the respondent to provide compensation of ₹ 10,00,000/- for causing injury to the complainant's financial interest and reputation and causing harassment and mental agony.
- iv. Direct the respondent to pay ₹ 1,00,000/- for forced litigation.
- v. Quash the demand of ₹ 3,00,000/- raised on account of 'cost of allotted flat'



Alternative relief:

- (i). Respondent be directed to pay delayed possession charges for the delay caused in delivery of possession till actual delivery of possession.
- (ii). Respondent be directed not to charge 18% p. a over interest on delayed payments.
- (iii). Respondent be directed to refund the per sq. ft. charges along with interest for providing decreased area of the unit.
- (iv). Direct the respondent to provide compensation of ₹ 10,00,000/- for causing injury to the complainant's financial interest and reputation and causing harassment and mental agony.
- (v) Direct the respondent to pay ₹ 1,00,000/- for forced litigation.
- (vi) Respondent be directed to not claim any maintenance charges till the time the possession is physically handed over and during the pendency of the complaint.

12. The complainant in the present complaint has pressed for relief of refund along with interest and in alternate, relief of possession of the booked unit along with delayed possession charges for the delay caused in delivery of possession. During the course of hearing dated 13.09.2023, learned counsel for the


R. K. Rastogi

complainant clarified that the complainant vide present complaint is seeking relief of refund of paid amount along with interest.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 01.05.2023 pleading therein:

13. That the complaint is not maintainable on account of relief sought by the complainants as the primary relief claimed is of compensation and hence Authority has no jurisdiction to adjudicate said matter and the same is liable to be dismissed.
14. That the complainants had booked an apartment in the project of the respondent namely 'RUHIL RESIDENCY' situated at Sector-3, Sarai Aurangabad Village, Bahadurgarh, Distt. Jhajjar, Haryana-124507. Complainants were allotted apartment no. C-301, Block C-1, 3BHK+3T, situated at 11th floor measuring super area of 1708 sq. ft.
15. That the said project of the respondent is consisting of two phases i.e Phase I and Phase II. Phase I includes Tower A,B,C,D, EWS, Commercial shops and Phase II includes Tower E,F,G,H,I, J & Low rise and Primary School. It is submitted that the construction of the entire project including both the phases has been completed and the Occupation Certificate has also been issued from the concerned department.



16. 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.
17. 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


Rathee

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".

18. That the construction of the said apartment is complete and the respondent had already issued an offer of possession in respect of the unit in question to the complainant on 10.05.2022. However, the complainant failed to come forward to clear outstanding dues and to take possession.

19. That the complainant stopped making payment against the apartment much before the due date of possession. The respondent had completed the project despite non-payment by the complainants and several other allottees like them. The complainant was informed of the completion of the project and receipt of occupation certificate and also requested to clear the payment due against the apartment, but complainant never turned to clear the outstanding against the apartment nor came forward to take possession.



20. 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. ISSUES FOR ADJUDICATION

21. Whether the complainant is entitled to relief of refund of the paid amount along with interest?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

22. As per the facts and circumstances, the complainant had booked an apartment bearing no. C-301, Block/Tower C-1, 3BHK+3T, situated at 3rd floor measuring super area of 1708 sq. ft. in the project of the respondent namely, "Ruhil Residency", situated at Bahadurgarh" in the year 2012. An apartment buyer agreement was executed between the parties on 12.12.2012. The total sale consideration of the apartment was fixed as ₹49,00,168/- against which the complainant, admittedly, has paid an amount of ₹ 44,34,244/- till date.

23. 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 12.06.2016. 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 12.06.2016. It is a matter of fact that COVID-19 outbreak hit construction activities post 22.03.2020 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 apartment 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. Opporapartmenties 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 apartment 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 apartment 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 apartment by 12.06.2016, meaning thereby that respondent should have applied and obtained occupation certificate by 12.06.2016, 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.

24. As observed earlier, the possession of the apartment in question should have been delivered to the complainant by 12.06.2016. However, the respondent delayed delivery of possession beyond stipulated time. The respondent has submitted that an offer of possession was issued to the complainant on 10.05.2022 after receipt of occupation certificate dated 17.03.2022. However, the complainant failed to come forward and accept the same. On the other hand it is the contention of the complainant that he has not received the said offer of possession.



In this regard it is observed that the respondent in its reply had placed on record an offer of possession dated 10.05.2022 allegedly issued to the complainant for taking over possession. However, no proof of service of offer of possession had been attached. During the course of proceedings, the respondent was asked to file proof of service of the offer of possession dated 10.05.2022. The respondent vide application dated 05.12.2023 had placed on record a courier dispatch slip of a private company dated 10.05.2023 in the name of the complainant. This courier dispatch slip was objected to by the complainant stating that the offer of possession placed on record by the respondent was of the year 2022 i.e dated 10.05.2022 whereas the courier slip was of the year 2023 i.e dated 10.05.2023. The respondent had again placed on record courier dispatch slip of the original offer of possession dated 10.05.2022 and further filed an affidavit clarifying that that offer of possession dated 10.05.2022 was sent to each and every allottee of the project as respondent had obtained the Occupation Certificate in March 2022. Since the present complainant failed to respond thus, on 10.05.2023 a final offer of possession was issued to the complainant.

After pursuing both the offer of possession letters dated 10.05.2022 and 10.05.2023 along with their courier dispatch slip it is observed that the courier slip annexed along with both the offer(s) of possession is of a private courier company and without any delivery report and thus the same cannot be relied



upon. The respondent has not filed any other proof of delivery/service report qua the offer of possession. Further, the complainant in its complaint file has placed on record a "provisional demand letter" issued on 20.08.2022 raising further demands from the complainant. In said demand letter the respondent had raised demand payable at the time of "offer of possession" which was held due by 30.04.2022. However, as per respondent's own admission the alleged offer of possession was firstly issued to the complainant on 10.05.2022 i.e a month after said demand letter. In light of the uncertainties qua the issuance of alleged "offer of possession" and lack of substantive proof thereof with respect to actual receipt of offer of possession to the complainant, it can be rightly ascertained that a valid offer of possession has not been issued to the complainant till date.

25. Admittedly delivery of possession of the booked unit has been inordinately delayed. Complainant in this case does not wish to continue with the project on account of inordinate delay caused in delivery of possession and is hence seeking refund of paid amount along with interest as per RERD Act 2016.

26. Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" in CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, the allottee has an unqualified


Ramesh

right to seek refund of amounts paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”

27. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent, therefore, the Authority finds it to be a case fit for allowing refund in favour of the complainant. So, the Authority hereby concludes that the complainant is entitled to receive a refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent. 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 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”

28. 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., 28.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.



29. Hence, Authority directs respondent to pay interest to the complainant on the total paid amount 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 28.04.2026 works out to 10.80% from the date of payments till actual realisation of amounts.

30. Authority has got calculated the interest on total paid amount from date of each payments till the date of this order i.e. 28.04.2026 and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest accrued till date of order i.e 28.04.2026 (in ₹)
1.	13,06,000/-	09.11.2012	19,00,863/-
2.	41,000/-	11.12.2012	59,827/-
3.	5,58,000/-	15.03.2013	7,91,357/-
4.	5,58,000/-	22.06.2013	7,75,012/-
5.	3,36,221/-	14.10.2013	4,55,639/-
6.	4,45,120/-	27.01.2014	5,89,388/-
7.	4,48,294/-	17.06.2014	4,44,8294/-
8.	2,61,643/-	29.03.2016	2,85,129/-
9.	4,79,960/-	27.01.2022	2,20,550/-
Total:	₹44,34,238/-		₹56,52,112/-

[Handwritten Signature]

The complainant vide present complaint is seeking refund of paid amount of ₹ 44,34,244/- . However, the complainant has only placed on record receipts to the tune of ₹ 39,54,278/-. For the remaining two instalments of ₹ 4,48,300/- and ₹ 31,666/- the corresponding page no. (s) 57 and 58 are blank sheets of paper. On the other hand the respondent vide statement of accounts dated 27.01.2022 has admitted to having received a total amount of ₹ 44,34,238/- from the complainant thus, for the remaining payment of ₹ 4,79,960/- the date of payment is being taken as 27.01.2022. Thus, the total amount paid by the complainant is being taken as ₹ 44,34,238/- only.

31. Complainant is also seeking compensation on account of injury to the complainant's financial interest and reputation and causing harassment and mental agony and litigation cost. In this regard it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors." has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses. Therefore, the complainant is advised to



approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

G. DIRECTIONS OF THE AUTHORITY

32. 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 refund the entire amounts along with interest of @ 10.80% ₹56,52,112/- to the complainant as specified in para 30 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.
- 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.

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



DR. GEETA RATHEE SINGH
[MEMBER]