



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1876 of 2023
Date of filing:	12.09.2023
First date of hearing:	18.10.2023
Date of decision:	26.05.2026

Reena Sharma
W/o Anand Kumar
R/o 15/55, First Floor,
Old Rajender Nagar,
New Delhi

.....COMPLAINANT

Versus

TDI Infracorp (India) Limited.
Vandana Building,
Upper Ground Floor, Vandana Building,
11, Tolstoy Marg,
Connaught Place, New Delhi- 110001

.....RESPONDENT

Present: - Adv. Arun Sharma, Learned Counsel for the Complainant
Adv. Shubhmit Hans, Learned Counsel for the Respondent
through VC.

ORDER (DR. GEETA RATHEE SINGH – MEMBER)

1. Present complaint has been filed on 14.08.2024 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate

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(Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made there under, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfill 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, 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 & location of project	"Lake Side Heights" in TDI Lake Grove City, Kundli, Sonipat
2.	RERA registered/not registered	Registered with registration no. 43 of 2017 dated 11.08.2017
3.	Unit no.	T-8/0501
4.	Super built up area	1170 sq. ft.
5.	Date of Allotment	27.06.2014
6.	Builder buyer agreement	01.07.2014
7.	Due date of possession	01.01.2017 <i>Clause 28However, if the possession of the apartment is delayed beyond the stipulated period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then thereafter for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/ penalty quantified @ Rs.5 per square foot of the</i>

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		<i>total super area of the apartment. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the apartment</i>
8.	Total Sale Consideration of the unit	₹49,17,822/-
9.	Amount paid by complainant	₹45,61,944/-
10.	Occupation Certificate received by the respondent	19.09.2024
11.	Offer of possession	31.07.2023 (fit outs) and 20.09.2024

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That the complainant relying upon the representation and assurances of the respondent booked an apartment bearing T-8/0501, Tower T8 admeasuring 117. Sq.ft. in the Project called "Lake Side Heights " situated at Lake Grove City, Sector-63 Kundli, Sonipat, Haryana for a total sale consideration of ₹42,90,000/-(calculated at the basic rate of ₹3666.67 per sq. ft.) plus EDC and IDC (311.60 per sq. meter which comes ₹3,64,572/-) with service tax levied by Govt. of India, thus total sale consideration amount comes to ₹49,17,822/-.
4. Thereafter, an allotment letter dated 27.06.2014 was issued by the respondent in favor of the complainant for the said unit. A copy of the allotment letter dated 27.06.2014 is annexed as Annexure C-1.
5. That a pre-printed, unilateral, ex-facie, and arbitrary builder buyer's agreement/buyer's agreement was executed inter-se the respondent and the complainant on 01.07.2014. According to Clause 28 of the buyer's



agreement, the respondent has to give possession of the said flat within a period of 30 months from the date of booking/registration of the unit. The unit was booked on 27.06.2014 by allottee, therefore the due date of possession was 01.02.2017. Copy of Agreement executed between allottee and builder is attached as Annexure- C-2.

6. That the respondent lured complainant in taking a home loan and made an offer of scheme of providing reimbursement of "subvention". It was to be paid by respondent to complainant in the form of cheques. Under the scheme the respondent was to pay EMI directly to the complainant so that complainant is not be burdened with EMIs, (as complainant had to pay EMIs to Bank) and respondent was to reimburse the interest amount payable by complainant against that loan. Complainant has not received the subvention amount from August 2021 till today.
7. That even the subvention amount which was paid by respondent was not paid on time, as per memorandum of understanding executed between the parties on 23.01.2015. Further the interest rate settled with the bank and complainant was @10.15% which respondent was supposed to be pay as per the MOU, however respondent was only paying @9.75% and even less. Copy of MOU dated 23.01.2015 has been annexed as Annexure C-3.
8. That the main grievance of the complainant in the present complaint is that despite payment of ₹45,61,944/- i.e. almost more than 95% of the sale price, as per the demand of the respondent in a timely manner, the



respondent party has miserably failed to deliver the possession of fully constructed and developed apartment as per the specifications shown in the brochure and promised in BBA. It is pertinent to mention here that there is an inordinate delay in handing over the possession of the unit. Copies of payment receipts and statement of account annexed as Annexure C-4 (colly) & C-5 (colly).

9. That the complainant visited the site in the month of June 2018 and June 2022, and many more times and after inspecting the site was appalled to see that the project was not ready as per the builder buyer agreement and when he inquired about this to the builder/promoter, no satisfying answer was given by the builder/promoter.
10. That suddenly respondent vide letter dated 31.07.2023 invited the complainant for offering possession cum-fitouts for above said apartment. It is pertinent to mention herein that respondent also sent a demand letter of ₹17,52,822/- on 31.07.2023 for offer of possession for fit out. Copy of letter of offering of possession for fit out with demand letter is annexed as Annexure C-6.
11. That this offer of possession is illegal and bad in law because possession must be offered after obtaining occupation certificate. The unit after its completion should have received occupation from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply,


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sewerage system, storm water drainage, electricity supply, roads, and street lighting.

12. That the complainant had availed a home loan of ₹25,00,000/- from HDFC Bank against the property. Due to the delay in possession, complainant has to bear both financial stress & legal stress together, which is a gross violation and breach of agreement by the respondent. Copy of the loan agreement, is annexed as Annexure C-7.
13. That the complainant sent many emails on various issues to respondent but same were not replied by the respondent nor any solution has been given by the respondent. The copies of the email are annexed as annexure C-8 (colly).
14. That the complainant was compelled to stay in a rental accommodation due to delay in possession. Complainant has no other home and has been waiting for this dream house/home. Each days delay on the part of respondent has caused mental agony and harassment to complainant, it is quite difficult to give the rent and bank interest simultaneously. Respondent had promised to deliver the ready flat/apartment by 1/2/2017. Complainant is only earning member in the family and has paid around more than 20 lakh as rent.
15. That the demand of ₹1,752,822/- is unreasoned, without any basis and because of this illegal demand complainant has suffered a lot physically, mentally. Possession should not be accompanied by unreasonable



additional demands. In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law.

16. That the respondent deliberately delayed executing flat buyer agreement from the date of deposits of ₹45,61,944/- to unjustly enrich themselves. The respondent has failed to hand over the flat with occupation certificate and have caused grave injustice to complainant.
17. That when offer of possession was given by the respondent to the complainant, complainant had to take the possession because of her financial condition as she was paying 10.15% interest on the loan amount as she has no option, thus she has taken the possession of above said apartment.
18. That the above acts/omissions and neglects only show that the respondent is good in making false promises and pressurized the esteemed customers so that all money it receive can be diverted to other projects. Such malpractices, failure to perform the obligations, besides being criminally intended are purposively misconducts of the respondent. That at the time of sale of the residential flat, the respondent had given all rosy pictures and


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had made false promises to the complainant and cheated complainant by not giving possession as agreed in the agreement, which is a clear cut case of "deficiency in service" on part of the respondent. Hence present complainant has been filed.

19. The complainant has filed various applications dated 08.05.2025, 12.08.2025, 27.01.2026 and 21.05.2026 for placing on record the affidavit/statement of complainant regarding the amount paid by respondent as per MOU and the amount which is yet to be paid along with bank statement and copy of cheques issued by respondent.

C. RELIEF SOUGHT

20. In view of the facts mentioned above, the complainant has prayed for the following reliefs:
- i. Pass an appropriate award directing the respondent party to pay interest at the prescribed rate for every month of a delay from the due date of possession till the handing over the possession with valid OC (complete in all respect with exclusive use of the designated car parking space), on the paid amount (as per section 18 of Real Estate (Regulation and Development) Act, 2016). (Justification: Respondent failed to handover the possession (complete in all respect) after 9 years of booking).
 - ii. Direct the respondent party to rescind the offer of possession without OC.



- iii. Direct the respondent party to provide GST input credit details as complainant already paid service tax.
- iv. Direct the respondent party to not to charge GST as complainant already paid service tax.
- v. Direct the respondent party to refund the GST charge as complainant already paid service tax.
- vi. To restrain the respondent party from charging holding charges and maintenance charges (since the project is incomplete).
- vii. The respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the Flat Buyer Agreement.
- viii. The respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over the physical possession of the serviced apartments.
- ix. The respondent party may kindly be directed to hand over the OC of flat to the allottee immediately and not later than one months from the date of judgment, complete in all respects, and execute all required documents for transferring/conveying the ownership of the respective service apartments.


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- x. Any other relief/direction which the Hon'ble Authority deems fit and proper in the facts & circumstances of the present complaint i.e (offer of scheme of providing reimbursement of "subvention").
- xi. That in the interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investor and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

D. REPLY ON BEHALF OF RESPONDENT


Learned counsel for the respondent filed detailed reply on 15.03.2024 pleading therein:

21. That at the very outset, it has been submitted that the present complaint filed by the complainant is not maintainable and is liable to be dismissed. That without prejudice to the above, it is submitted that the Statement of Objects and Reasons of the Real Estate (Regulation and Development) Act, 2016 clearly demonstrates that the Act has been enacted for effective consumer protection and not for protecting speculative investors. Since the RERA Act does not define the term "consumer", the definition of consumer as provided under the Consumer Protection Act, 1986 must be



relied upon. The complainant purchased the unit purely for investment and speculative gains, and therefore does not fall within the ambit of a "consumer". On this ground alone, the complaint deserves dismissal.

22. That the complainant has not approached this Hon'ble Authority with clean hands. The complainant has deliberately concealed material facts and has suppressed the true and correct position regarding her own defaults. The complainant has failed to disclose that she not punctual in making timely payment of installments.
23. That a bare perusal of the complaint reveals that the complainant has failed to establish any cause of action against the respondent. The complaint is based on bald and unsubstantiated allegations of delay in handing over possession, which are factually incorrect and legally untenable. That the allegations made by the complainant are false, baseless and mischievous. The complaint has been filed with an ulterior motive to wriggle out of the agreed contractual terms and conditions duly executed between the parties. There exists no cause of action in favour of the complainant to institute the present proceedings.
24. That the respondent has made huge investments in obtaining approvals and carrying on the construction and development of the project and despite several adversities has completed the construction of the project and has offered fit out possession of the unit to the complainant and has sent the

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offer of possession for fit out along with statement of account to the complainant.

25. That the complainant was not punctual in making payments and is liable to pay interest for delayed instalments and interest is chargeable on account of delay. The outstanding amount of the unit is ₹17,52,822/- as on 31.07.2023 but the complainant has not come forward in making the payment.
26. That without prejudice, it is submitted that there has been no delay attributable to the respondent in fulfilling its contractual obligations. Any delay, if at all, occurred due to circumstances beyond the control of the respondent and falls squarely within the ambit of force majeure, including Covid-19 pandemic and nationwide lockdowns, prohibition and restrictions on construction activity in NCR due to pollution control measures and farmers' agitation leading to prolonged disruption of construction activities for more than 2 years. Request has been made to dismiss the complaint for above mentioned reasons.
27. Further, vide application dated 11.11.2025 filed under Section 151 C.P.C., the respondent has placed on record the final statement of account (disclosing the break up of demand of ₹17,52,822/-) and occupation certificate dated 19.09.2024.


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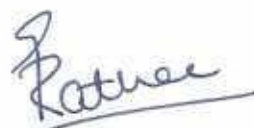
E. WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT

28. Learned counsel for the respondent filed written submissions in the matter on 06.05.2026 contesting the complaint on following grounds:

- i) **Default in fulfilling its obligations on part of complainant** - It has been submitted that the complainant has consistently remained in breach of the builder buyer agreement by failing to adhere to the agreed payment plan. The respondent company issued several demand letters dated 13.08.2014, 25.09.2014, 02.01.2015, 09.09.2015, 14.10.2015, 02.06.2016, 03.01.2017, 16.01.2017, 17.01.2017, 04.02.2017, 25.02.2017, 31.03.2017, 28.07.2017, 28.10.2017, 25.05.2018, 17.07.2018, 20.08.2019, 25.05.2019, 31.07.2023 and 11.09.2023 upon the complainant to clear the dues, copies of which are annexed as Annexure A-1 (Colly). However, the complainant failed to comply with the same and continued to remain in default. As per Section 19(6) and 19(7), an allottee is bound to make payments to the promoter in accordance with the builder buyer agreement and in the event of failure to do so, allottee is liable to pay interest.
- ii) **Delay due to force majeure events** - It has been submitted that any alleged delay in the completion of the project occurred due to force majeure circumstances beyond the control of the respondent company. It has been a continuous endeavor of the respondent


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company to complete the construction of the project in time and deliver the possession of the apartment to the consumers. As per clause 28 of the builder buyer agreement, it has been clearly stated that on account of force majeure reasons which are beyond the control of respondent company, the respondent shall be entitled to extension of the time in completion of the project. During the construction of the project, several directions were issued by the Hon'ble Supreme Court and National Green Tribunal to stop construction activities in the NCR region due to rising pollution levels. Further, between March 2020 and November 2021, the COVID-19 pandemic resulted in nationwide lockdowns, labour migration, disruption of supply chains and stoppage of construction work due to orders issued by the Government of India and the Government of Haryana. In addition, from September 2020 to November 2021, the farmers' protest caused prolonged road blockages in and around the Sonipat region, severely affecting transportation of construction material and manpower. These circumstances were beyond the control of the respondent company and therefore the respondent is entitled to extension of time for handing over of the housing units in terms of Clause 28 of the builder buyer agreement.



- iii) **Non disclosure of cause of action** – The complainant has failed to disclose any clear or specific cause of action in the entire complaint. It is submitted that the complainant has not mentioned as to when the cause of action arose, nor has she stated any particular date, event, or circumstance giving rise to the alleged grievance. In the absence of such material particulars, the complaint remains vague, incomplete, and does not satisfy the basic requirement of pleadings. It is a settled principle of law that a complaint must disclose the facts constituting the cause of action along with the time of its accrual, failing which the proceedings become unsustainable. Therefore, on this ground alone, the present complaint deserves to be dismissed as not maintainable.
- iv) **Valid offer of possession already made by the respondent**- The respondent after receiving occupation certificate dated 19.09.2024, duly made a valid offer of possession to the complainant vide letter dated 20.09.2024. The said letter was accompanied by the final statement of account, whereby a sum of ₹17,52,822.12/- was demanded from the complainant. However, the Complainant has, till date, failed to pay the said amount and take the possession of the unit. Copy of letter dated 20.09.2024 is annexed as ANNEXURE A-2. It is pertinent to mention that Section 19(10) of the Real Estate (Regulation and Development) Act, 2016 binds the allottee to take


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possession of the unit upon issuance of the occupation certificate for the said unit.

- v) **Breakup of amount of ₹17,48,776.55/- as demanded by the respondent** - It has been submitted that as per final statement of account dated 10.04.2026 that the total cost of the unit amounts to ₹61,18,710.43/-, which includes the unit cost, additional area cost, applicable taxes, EDC charges, club membership, EFFC charges, IFMS, miscellaneous expenses and parking charges. It is further submitted that GST @18% has been duly levied on club membership, EFFC charges, miscellaneous expenses and vehicle parking in accordance with applicable statutory provisions. Out of the said amount, the complainant has paid a sum of ₹45,61,944/-, leaving an outstanding balance of ₹15,56,766.43. It is further submitted that late payment charges of ₹30,384/- on EDC and ₹1,61,626.12/- on the unit cost, calculated @18% per annum, are also payable. Accordingly, the total outstanding amount payable by the complainant as on date comes to ₹17,48,776.55. It has been submitted that the tax charged by the respondent company on EDC, as reflected in the final statement of account, was inadvertently added due to a clerical error. Accordingly, after deducting the said amount of ₹4,046/- from ₹17,52,822.12/-, the total payable amount comes to ₹17,48,776.55/-. That the tax charged



on the unit cost is an aggregated amount comprising applicable Service Tax levied prior to July 2017 and Goods and Services Tax (GST) applicable post July 2017. That the tax has been levied only at the time when specific amounts were demanded by the respondent company from the complainant. Service Tax has been charged on the amounts demanded prior to the enforcement of GST, whereas GST has been charged on the amounts demanded subsequent to the enforcement of GST.

F. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

29. Learned counsel for the complainant reiterated the submissions as were made in complaint and argued that the fit-out offer of possession issued vide letter dated 31.07.2023 was not acceptable to the complainant as the respondent unilaterally increased the area of the unit without the consent of the complainant. He further argued that the final statement of account dated 31.07.2023 issued by the respondent was unjustified as demands raised were illegal and arbitrary. The respondent has charged an exorbitant amount as taxes whereas the complainant has already paid an amount of ₹45,61,944/- (including taxes) against the total sale consideration of ₹49,17,822/-. So, respondent be directed not to charge the same.
30. Learned counsel for the respondent on the other hand argued that the increase in the area of the unit was informed to the complainant when offer


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for fit out was made to her, however the complainant never challenged said increase in area and no communication in this regard was ever sent to the respondent. He further argued that even in the preset complaint, the increase in the area of the unit has not been disputed by the complainant nor any relief has been sought in this regard. The respondent has already obtained the occupation certificate dated 19.09.2024 and offer of possession was made to the complainant on 20.09.2024. Therefore, the project stands completed and the respondent remains ready and willing to hand over possession.

G. ISSUES FOR ADJUDICATION

31. Whether the complainant is entitled to delay interest for delay caused in handing over the possession?

H. FINDINGS ON THE OBJECTIONS RAISED BY RESPONDENT

a) Objection raised by the respondent that the complainant is not "consumer" but rather "investor" who purchased the unit for investment and speculative gains.

The respondent has taken a stand that the complainant is a speculative buyer who had invested in the project for monetary returns and taking undue advantage of RERA Act 2016 as a weapon during the present downside conditions of the real estate market and therefore not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the



promoter contravenes the provisions of the RERA Act, 2016 or the rules and regulations. In the present case, complainant is aggrieved person who have filed a complaint under section 31 of the RERA Act, 2016 against the promoters for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here it is important to emphasize upon the definition of the term allottee under the RERA Act 2016, reproduced below:-

*“Section 2(d): **Allottee:** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”*

In view of the above mentioned definition of allottee as well as upon careful perusal of builder buyer agreement dated 01.07.2014 it is clear that complainant is an allottee as Unit no. Wf-49/GF, admeasuring 1170 sq. ft. sq. ft. in the project known as “Lake Side Heights” was allotted to her by the respondent promoter. The concept/definition of investor is not provided or referred to in RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be “promoter” and “allottee” and there cannot be a party having status of an investor. Further, the definition of “allottee” as provided under RERA



Act, 2016 does not distinguish between an allottee/consumer who has been allotted a plot, apartment or building in a real estate project for self consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as **M/s Srushti Sangam Developers Ltd. vs Sarvapriya Leasing (P) Ltd. and Anr.** had also held that the concept of investors is not defined or referred to in the Act. Thus, the contention of the promoter that allottees being investor are not entitled to protection of this Act stands rejected.

b) Objection raised by the respondent that no cause of action exists in favour of the complainant to institute the present complaint.

In this regard it is observed that a cause of action arises the moment a legal right is violated and damages occur. It generally occurs when a person possessing a right recognized under law suffers damages due to breach of duty by the person who owes him a legal duty. In the present case, as per builder buyer agreement executed between the parties on 01.07.2014, respondent was under an obligation to hand over the possession of the unit within 30 months i.e by 01.01.2017. But he failed to do so. The moment there is a breach of duty on respondent's part to handover the possession within stipulated time as per the agreed terms, the cause of action arises in favour of the complainant and he is thus



entitled to file complaint. Hence, the objection of the respondent that no cause of action exists in favour of the complainant stands rejected.

I. OBSERVATIONS OF THE AUTHORITY

32. Facts set out in the preceding paragraph demonstrate that the complainant booked a floor in the year 2014 and vide allotment letter dated 27.06.2014, flat no. T-8/0501, admeasuring 1170 sq. ft. on the fifth floor in the project namely "*Lake Side Heights, in Lake Grove City*", Kundli, Sonipat was allotted to the complainant. Thereafter, a builder buyer agreement dated 01.07.2014 was executed between the parties for total sale consideration of ₹49,17,822/-. It is further evident from the record that against the said total sale consideration, complainant has paid a total amount of ₹45,61,944/- to the respondent.
33. It is an admitted fact that the flat in question was allotted to the complainant pursuant to the execution of the builder buyer agreement dated 01.07.2014, and as per Clause 28 thereof, the respondent was obligated to deliver possession within 30 months, i.e., on or before 01.01.2017. However, the respondent failed to honour its contractual obligation within the stipulated period. Respondent has attributed delay in delivery of possession to force majeure conditions on account of COVID outbreak, ban on construction activities in the NCR region, farmers protest causing prolonged road blockages etc.



As observed above, possession of the unit in question became due on 01.01.2017. It is a matter of fact that COVID-19 outbreak hit construction activities post 22nd March 2020 i.e nearly three years after the due date of possession. Authority observes that possession of the unit had already been delayed for a long period of time even before the COVID-19 halted construction. Respondent had failed to construct the project on time and deliver possession to the complainant. 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.

The Authority further observes that there has been a delay on the part of the respondent in completing the project and handing over possession of the unit to the complainant. The various reasons cited by the respondent such as ban on the construction activities within Delhi-NCR region expressing alarm on severe air pollution level, farmer's protest are not deemed convincing as all these incidents happen to occur after the due date of possession. The due date of possession as per the agreement was in the year 2016, which precedes the above said incidents. Thus, this contention of the respondents does not qualify for consideration under the force majeure clause, as the circumstances occurred after the contractual due date for possession. Therefore the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

34. Admittedly, the respondent has issued offer of possession for fit outs along with final statement of account vide letter dated 31.07.2023 with a demand of ₹17,52,822.12/-, however the said offer was admittedly made without obtaining the occupation certificate, and therefore cannot be treated as a


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valid offer of possession in the eyes of law and is accordingly held to be premature and bad in law.

35. The respondent has submitted that he has received occupation certificate for the project on 19.09.2024 and issued offer of possession to the complainant on 20.09.2024 along with final statement of accounts. The complainant has denied receiving any offer of possession from the respondent after receipt of occupation certificate. The Authority has perused the letter of offer of possession dated 20.09.2024 along with its courier dispatch slip and it is observed that the courier slip annexed along with the offer 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. Although respondent has completed the project and had received OC for the same but onus of proving the fact that after receiving OC, offer of possession was made to the complainant and she had denied to accept the same was on the respondent and said burden of proof has not been discharged by the respondent. Furthermore, after perusing the documents available on record, it is observed that the present complaint was filed on 12.09.2023 and respondent filed its reply on 15.03.2024 i.e before the receipt of occupation certificate. Thereafter, during the pendency of the present proceedings, respondent received the OC on 19.09.2024, however the same was placed before the Authority vide



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application dated 11.11.2025 i.e after a lapse of more than one year from its issuance. Vide this application, respondent never divulged the fact whether possession has been offered to the complainant or not. The respondent then filed its written submissions on 06.05.2026 submitting that offer of possession has already been made to the complainant on 20.09.2024. If so was the case, respondent could have informed the Authority regarding the issuance of offer of possession any time after 19.09.2024, specially at the time of filing of application dated 11.11.2025, but said letter was never placed on record till 06.05.2026, which raises suspicion in the mind of the Authority with regard to the sanctity of said letter of offer of possession. Therefore, Authority is unable to rely on this letter dated 20.09.2024 and respondent is liable to issue fresh offer of possession along with final statement of accounts.

36. Complainant in her complaint is primarily seeking interest for delay caused in handing over the possession of the flat. On the other hand respondent has averred that complainant was offered possession on 20.09.2024, however it is the complainant who has failed to accept the possession and make remaining payment and is thus liable for breach of provision of Section 19(6), 19(7) and 19(10) of the RERA Act, 2016 and therefore cannot seek relief under RERA. Authority observes that Sections 19(6), 19(7) and 19(10) impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. In the



present case, the complainant opted for construction linked plan and made maximum payment (more than 90%) till 2018. The remaining installments were to be made on offer of possession which was due on 01.01.2017. However, the respondent did not complete the project as per agreed timelines and offer the possession on due date and hence post due date of possession complainant was not obligated to make further payments unless the possession of the unit was offered to her. Hence, the respondents claim that the complainant is not entitled to relief under RERA is unsustainable.

As per provisions of RERA Act, 2016, a promoter is responsible for completing the project on time and obtain all necessary approvals. In the present case, respondent had promised to deliver possession latest by 01.01.2017. This implies that the project should have been completed by that date, and the respondent should have applied for and obtained the Occupation Certificate (OC) from the competent authority to ensure timely possession. However, the respondent only received the Occupation Certificate on 19.09.2024, which was seven years after the due date of possession. Failure to meet these obligations allows the buyer to seek relief under RERA, such as interest for delays or even refund with interest.

37. As discussed earlier as per clause 28 of apartment buyer agreement executed between the parties, possession of the unit should have been delivered by 01.01.2017, however, valid offer of possession has not been issued till date. In the present complaint, the complainant intends to


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continue with the project and by virtue of Section 18 of the Act, while exercising option of taking possession of the unit the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under:

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

Hence, complainant is entitled to delay possession interest from the period 01.01.2017 i.e., due date of possession till upto the date on which fresh offer of possession will be given to the complainant. 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."

Such interest shall be calculated at the rate prescribed in Rule 15 of HRERA Rules, 2017 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".."

38. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 26.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.
39. Hence, the Authority directs the respondent to pay delay interest to the complainant for delay caused 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 26.05.2026 works out to 10.80% from the due date of possession i.e. 01.01.2017 till the date legally valid fresh offer of possession along with fresh statement of account is issued to the complainant.



40. Authority has got calculated the interest on the total paid amount from the due date of possession or date of payment (whichever is later) till the date of this order i.e., 26.05.2026 and further monthly interest at the rate of 10.80% as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Due date of possession of date of payment (as per customer ledger annexed as Annexure C-5) whichever is later	Interest Accrued till 26.05.2026 (in ₹)
1.	25,78,878/-	01.01.2017	26,19,603/-
2.	6,72,458/-	30.10.2017	6,22,987/-
3.	33,622/-	30.10.2017	31,149/-
4.	19,890/-	09.04.2018	17,479/-
5.	6,630/-	21.04.2018	5,803/-
6.	6,630/-	30.05.2018	5,726/-
7.	3,22,382/-	05.06.2018	2,77,870/-
8.	6,12,000/-	16.06.2018	5,25,508/-
9.	2,33,668/-	30.07.2018	1,97,602/-
10.	25,262/-	18.10.2019	18,037/-
11.	25,262/-	18.10.2019	18,037/-
12.	25,262/-	23.10.2019	17,999/-



Total	₹45,61,944/-		₹43,57,800/-
Monthly interest			₹41,845/-

41. The complainant has also prayed that the amount collected on account of GST should be refunded and respondent be directed not to demand over further payments as the delay is on the part of the respondent. With regard to this, Authority is of the view that the deemed date of possession in this case works out to 01.01.2017 and charges/taxes applicable on said date are payable by the decree holder. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. The delay caused in delivery of possession has already been attributed on the part of the respondent. In case the respondent had timely completed the construction of the project, then the GST charges would not have come into force. Therefore, the decree holder is not liable to pay GST charges and in case the respondent has charged GST charges, same be refunded to the complainant.
42. The complainant has also sought the relief that respondent be refrained from charging holding charges and maintenance charges. In this regard it is observed that as per clause 17 of the builder buyer agreement, the maintenance charges are to be charged only from the date of handing over of the possession of the apartment which in the present case has not been



handed over to the complainant. Hence, maintenance charges prior to handover of possession are not payable on the part of decree holder.

With regard to holding charges it is observed that the respondent having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by **Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020** (supra) wherein it is observed that a developer/ promoter/ builder cannot levy holding charges on a homebuyer/allottee as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case. Also, the respondent is already raising demand on account of maintenance charges from the complainant. Both these charges cannot be applied parallelly by the respondent. In present complaint since complainant is liable to pay maintenance charges w.c.f from handing over the possession, therefore, holding charges will not be payable to the respondent.

43. The reliefs claimed by the complainant from (vii), (viii) and (xi) are neither part of the pleadings nor pressed upon by the complainant during hearing. Hence, no observation is being made in this regard.


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44. The complainant has also sought the relief that respondent be directed to hand over the OC of the flat. In this regard it is observed that the respondent has already placed on record the copy of occupation certificate dated 19.09.2024 on 11.11.2025 and same has been supplied to the complainant. Hence, no further adjudication is required in this regard.
45. It is pertinent to mention here that complainant in her pleadings has stated that as per memorandum of understanding dated 23.01.2015 executed between the parties, respondent agreed to reimburse the complainant the interest component of the loan availed by her, every month by way of cheques till the date of offer of possession. However, the respondent has failed to reimburse the complainant after April 2022. In this regard it is observed that although the complainant has placed on record her account statement and copies of cheques issued by respondent (for payment of interest as per EMI subvention scheme) by way of various applications, but it is noteworthy to mention here that no particular relief has been sought by the complainant in this regard in the 'relief clause'. Hence no observation in this regard is being made. Nevertheless, if the complainant is aggrieved by the violation of any of the terms of the memorandum of understanding/contract executed between her and the respondent, she is at liberty to avail remedy as per Section 18(3) of the RERA Act, 2016.



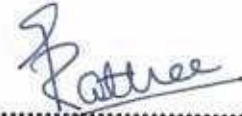
J. DIRECTIONS OF THE AUTHORITY

46. 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 issue fresh offer possession to the complainant along with statement of account including therein the delay interest calculated in Para 40 and as per observations made in Para 41 and 42 of this order, within 30 days of uploading of this order. Complainant shall accept the same within next 30 days of the offer of possession.
- ii. Respondent is directed to pay upfront delay interest of ₹43,57,800/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017. Respondent will be further liable to pay monthly interest of ₹41,845/- till fresh legally valid offer of possession is issued to the complainant.
- iii. Respondent is directed to get conveyance deed of flat of the complainant executed within 30 days of actual handover of possession of flat.



- iv. Complainant will remain liable to pay balance consideration amount as per the agreement executed between the parties. Complainant will also be liable to pay interest at the prescribed rate for delay, if any.
 - v. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.
47. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.



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DR. GEETA RATHEE SINGH
[MEMBER]