



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1375 of 2023
Date of filing.:	28.06.2023
First date of hearing.:	02.08.2023
Date of decision.:	07.04.2026

1. Maya Kaur s/o Sh. Anup Singh  
2. Anup Singh s/o Sh. Maan Singh  
R/o H.no. 236. Village Rohna,  
Tehsil Karkhoda, Dstt Sonapat  
Haryana 131403

....COMPLAINANTS

VERSUS

Ruhil Promoters Private Limited  
Office at Ruhil Residency, Sector-3,  
Village Sarai, Aurangabad, Bahadurgarh,  
District Jhajjar, Haryana

....RESPONDENT

**Present: -** Adv. Iqbal Singh, Proxy counsel for Adv. Dixit Garg,  
Learned counsel for the Complainant  
through video conference.  
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. 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 Apartment Buyer Agreement	12.12.2012
5.	Details of the unit.	Apartment no. J-1104, Block J-4,2 BHK+2T, situated at 11th floor measuring super area of 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	12.06.2016
8.	Total sale consideration	₹ 30,20,000/-
9.	Amount paid by complainant	₹ 25,49,953/-
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. Complainants had booked an apartment bearing no. J-1104, Block J-4, 2BHK+2T, situated at 11th floor measuring super area of 1240 sq. ft. in the project of the respondent namely, "Ruhil Residency", situated at Sector-3, Bahadurgarh in the year 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 ₹30,20,000/- against which the complainant has paid an amount of ₹25,49,953/- till date. As per clause 9(i) of the agreement, respondent had committed to deliver possession of the unit within 36 months

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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 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 complainant has already paid almost 95% of the total sale consideration of the apartment.
6. That the complainants 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 complainants 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 complainants whose hard earned money was lying with the respondent was left with no other option except to wait for the possession.
7. That the respondent despite taking money has not handed over the possession of the flat despite lapse of more than nine years from the due date of possession; hence present complaint has been filed seeking possession of the apartment along with interest from the due date of possession till actual handing over of physical possession.

### **C. RELIEF SOUGHT**

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

  
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- i. That in proviso to the Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, the compensation on account of the delayed possession along with interest may kindly be awarded to the complainant in view of the Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
  - ii. That the amount collected on account of club charges may kindly be ordered to be refunded to the complainant as there is no club in existence at site.
  - iii. The amount collected on account of the GST should be refunded back to the complainant as the delay is on the part of the respondent and hence the complainant is not liable to pay the GST.
  - iv. The amount demanded on account of staircase should be quashed being illegal and void demand.
  - v. The interest on account of the maintenance charges paid by the complainant may kindly be awarded to the complainant as there were no basic amenities even till today.
  - vi. The adequate compensation on account of the misrepresentation and unfair trade practices by using the inferior quality of material may kindly be awarded to the complainant.
9. During the course of hearing, learned counsel for the complainant reiterated the submissions made in the complaint.



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

Learned counsel for the respondent filed detailed reply on 20.09.2024 pleading therein:

10. That the complaint is not maintainable on account of relief sought by the complainant as the primary relief claimed is of compensation and hence Authority has no jurisdiction to adjudicate said matter and same is liable to be dismissed.
11. That the complainant had booked a unit in the project of the respondent namely 'RUHIL RESIDENCY' situated at Sector-3, Sarai Aurangabad Village, Bahadurgarh, Distt. Jhajjar, Haryana-124507. Complainants were allotted apartment no. J-1104., Block J-2, 2BHK+2T, situated at 11th floor measuring super area of 1240sq. ft.
12. 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.

13. 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".*

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14. 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.
15. 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 complainants were informed of the completion of the project and receipt of occupation certificate and also requested to clear the payment due against the unit, but complainants never turned to clear the outstanding against the unit nor came forward to take possession.
16. That the complainants have not approached the Hon'ble Authority with clean hands and have not disclosed that the possession had already been offered to the complainants by the respondent vide letter dated 15.06.2022 and the complainants were requested to make payment of the outstanding amount. The complainants did not come forward to clear outstanding amounts or to take possession of the unit in question. It is submitted that the complainants are

  
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trying to evade their liabilities as agreed in the apartment buyer agreement that was executed without any protest.

17. 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.

18. It is submitted that the complainants 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**

19. Whether the complainant is entitled to relief of delayed possession charges along with interest?

20. Whether the complainant is liable to pay club charges, maintenance charges, staircase charges, and GST?

#### **F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

21. In light of the background of the matter as captured in this order and also the arguments rendered by both parties, Authority observes that the respondent in the present complaint has raised a preliminary objection with respect to the



maintainability of the present case on the ground that the primary relief of the complainant is compensation. In this regard it is observed that the relief clause bearing no. (i) reads as follows:

*"That in proviso to the Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, the compensation on account of the delayed possession along with interest may kindly be awarded to the complainant in view of the Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017."*

Drawing an inference from the language of the complaint and said relief clause, it can be safely assumed that the complainant is seeking relief of payment of delay interest for the delay cause in completion of the project and not otherwise. Said clause has to be harmoniously read with the complaint. Mere use of the word compensation would not change the actual relief of delayed possession charges sought by the complainant. Moreover, the complainant is seeking relief of compensation on account of delayed possession along with interest as per Rule 15 of HRERA Rules, 2017. Meaning thereby that the complainant has sought two parallel remedies i.e. compensation and interest. Therefore, plea of the respondent is not tenable and the Authority has complete subject matter jurisdiction to adjudicate upon the complaint/relief claimed.

22. Now, as per the facts and circumstances, the complainants had booked an apartment bearing no. J-1104., Block J-2, 2BHK+2T, situated at 11th floor

measuring super area of 1240sq. 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 ₹30,20,000/- against which the complainant, admittedly, has paid an amount of ₹ 25,49,953/- 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 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 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 15.06.2022 after receipt of occupation certificate dated 17.03.2022, however, the complainants failed to come forward and accept the same. In this regard, it is observed that the respondent has placed on record a copy of offer of possession letter dated 15.06.2022 along with demand letter. The respondent in its submissions has placed on record dispatch/postal receipt along with these letters as proof. On perusal of record, it is observed that said copy of dispatch slip dated 15.06.2022 is of a private courier company, however there is no proof of service/delivery of the same upon the complainants. Authority is unable to rely on merely a dispatch slip of a private company and also there is no tracking report along with the same to establish veracity of service upon the respondent. Hence, the same cannot be considered a valid proof of service. As per facts, a formal offer of possession in writing has not been exclusively issued to the complainants.

25. Further, by way of present complaint, complainants have alleged that respondent has illegally raised demand on account of staircase charges, maintenance charges, club charges and GST charges and has prayed that respondent be directed not to charge the same. The Authority has gone through



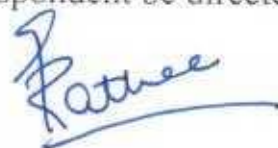
the averments of the parties and documents available on record and observes as under:

- a. 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 complainant, therefore the it is 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 and the same is applicable in this case as well.
- b. The complainants have 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 1(viii) of the apartment buyer agreement, the complainants have agreed to pay demand raised on account of maintenance charges, therefore the complainants are 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. Upon perusal of record, it is observed that no such date has been intimated by the respondent to the complainants. Further a valid



offer of possession is yet to be made to the complainant and consequently the complainants are yet to take physical possession. Therefore, the complainants shall be liable to pay maintenance charges upon issuance of a valid offer of possession.

- c. The complainants have prayed that the amount collected on account of club charges be refunded as there is no club in existence at site. In this regard, it is observed that club charges can only be levied when the club facility is physically located within the project and is fully operational. Respondent has not placed any document/photograph to negate the claim of the complainant. Respondent is entitled to charge club membership charges only after the club at the site becomes functional and the complainant is able to make use of it. Since at present the club is not there, respondent cannot raise demand on account of club membership charges. Complainants are seeking refund of club charges, however it has not been mentioned as to when and how much amount has been paid as club charges and no document in support thereof has been attached. However, if any amount for the club has been paid by the complainant, it shall be refunded back to her with prescribed rate of interest.
- d. The complainants have 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. However, said relief is neither part of the pleadings nor pressed upon by the complainant during hearing. Hence, no observation is made in this regard.

26. As discussed earlier as per clause 9(i) of apartment buyer agreement executed between the parties, possession of the unit should have been delivered by 12.06.2016, however, till date a valid offer of possession has not been issued to the complainants. The complainants wish to continue with the project in question. Therefore, as per Section 18(1) of the Act, the complainant becomes entitled to receive "delay interest" from the due date of possession i.e., 12.06.2016 till the date a valid offer of possession is issued to the complainant. Authority, hereby, concludes that the complainant is entitled to payment of delay interest from the due date i.e., 12.06.2016 till the date on which a legally valid offer of possession is made. 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”*

27. 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. 07.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.
28. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2% which as on date works out to 10.80% from the due date of possession i.e. 12.06.2016 till the date a valid offer of possession is issued to the complainants.



29. Authority has got calculated the interest on total paid amount from due date of possession or date of payment (whichever is later) till the date of order i.e. 07.04.2026 and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Due date of possession/ Date of Payment	Interest accrued till date of order i.e 07.04.2026
1.	25,49,953/-	12.06.2016	27,06,415/-
<b>Total:</b> 25,49,953/-			27,06,415/-
<b>Monthly Interest:</b>			22,635/-

30. Complainants are also seeking compensation on account of misrepresentation and unfair trade practices by using inferior quality material. 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

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

### G. DIRECTIONS OF THE AUTHORITY

31. 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 ₹27,06,415/- (till date of order i.e 07.04.2026) to the complainants towards delay already caused in handing over the possession and further monthly interest @ ₹22,635/- till a valid offer of possession is issued to the complainant.
- 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 will remain liable to pay the balance consideration amount as per observations made in this order. Complainants will also be liable to pay interest at the prescribed rate for delay, if any.
- iv. The respondent shall not charge anything from the complainants which is specifically not part of the agreement to sell.



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



.....  
DR. GEETA RATHEE SINGH  
[MEMBER]

