HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	**512 of 2026**
Date of Filing:	**03.04.2026**
First Date of Hearing:	**28.07.2026**
Date of Decision:	**03.11.2026**

Lalit Kumar Sharma
Flat No. 518, Block C,
Divya Jyoti Apartments, Sectoer-19,
Rohini, Delhi, 110089 .....COMPLAINANT

Versus

Omaxe Limited
Shop No. 19-B, First Floor,
Omaxe Celebration Mall, Sohna Road,
Gurgaon, Haryana, 122001. .....RESPONDENT

Present: Adv. Arjun Kundra, Ld. Counsel for Complainant through VC.

Adv. Arjun Sharma, Ld. Counsel for Respondent through VC.

ORDER : DR. GEETA RATHEE SINGH -(MEMBER)

1. Present complaint has been filed 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 (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 complainants, 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	"Subhangan", Sector-4-A, Kassar Road Bahadurgarh, Haryana.
2.	Nature of the project.	Residential
3.	RERA Registered/Not Registered	Registered vide HRERA-PKL-202 of 2017
4.	Details of the unit	RHBH/Tower-23/Fifth/501
5.	Date of Floor Buyer Agreement	07.07.2014
6.	Possession clause 40(a) as per BBA dated 07.07.2014	The Company shall complete the development/construction of the Unit/Project within 18 (Eighteen) months from the date of signing of this Agreement by the Buyer(s) or within an extended period of 6 (Six) months. Completion of development

		of the Unit within such 24 (Twenty Four) months is subject to force majeure conditions [as mentioned in Clause (b) hereunder] and subject to timely payment by the Unit Buyer(s) or subject to any other reasons beyond the control of the Company. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of the aforesaid reasons and the Company shall be entitled to a reasonable extension of time for the delivery of possession of the said Unit to the Buyer(s). The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/ concerned State Legislative Body.
7.	Due Date of Possession	07.07.2016
8.	Total Sale Consideration	₹32,45,779.20/- (as per BBA dated 07.07.2014)
9.	Amount paid by the complainant	₹30,55,828.57/-
10.	Occupation Certificate	NO

11.	Offer of Possession	13.02.2026

B. FACTS OF THE COMPLAINT AS MENTIONED IN THE COMPLAINT

3. That the complainant is a law-abiding citizen and an allottee of apartment no. RHBH/Tower-23/FIFTH/501, admeasuring a super area of 1280 sq. ft. (118.91 sq. mtrs.), in the group housing project known and styled as "Omaxe Shubhangan" (comprising 3-4 BHK units), situated at Sector 4A, Village Kasar, Tehsil Bahadurgarh, District Jhajjar, Haryana. The respondent company had launched the said project in the year 2008 as a gated community spread over an expansive area of 12.63 acres within Omaxe City, aggressively publicizing and marketing it through extensive print and electronic media, direct sales agents, brokers, and company representatives. It was prominently represented that the project enjoyed prime connectivity to Delhi/NCR via metro networks and arterial transportation corridors, and would be delivered with state-of-the-art infrastructure and high-end living amenities, including round-the-clock security, dedicated green belts, floral pathways, landscaped soothing gardens, a modern club facility, a swimming pool, a badminton court, a fully equipped gymnasium, and multipurpose recreational rooms. Induced by these assurances, representations, and the market goodwill claimed by the respondent, the complainant, who was seeking residential accommodation for his personal residence and family, made the booking. The subject unit was originally allotted

to one Smt. Sudesh Kumari vide allotment letter dated 20.11.2013 and subsequently assigned and transferred in favour of the complainant, whereupon an allotment letter and endorsement were executed, placing the complainant into the shoes of the original allottee with all vested rights, entitlements, and liabilities. The total sale consideration of the subject unit was fixed at ₹32,45,779.20/- (basic sale price being ₹29,29,779.20/-), against which the complainant had already paid a substantial sum totaling ₹30,55,818.51/-, constituting more than 94% of the total value, as duly corroborated by the respondent's own statement of account dated 21.11.2024 and corresponding receipts.

4. That despite issuing the initial allotment in November 2013 and continuously demanding and pocketing substantial sums, the respondent company deliberately delayed the execution of the formal Apartment Buyer's Agreement until 07.07.2014 on various frivolous pretexts. When the draft agreement was finally handed over, it revealed completely arbitrary, unilateral, and oppressive conditions drafted entirely to the developer's advantage. Although the complainant strongly protested against these oppressive stipulations, the respondent categorically declined to allow any negotiation, modification, deletion, or amendment, issuing coercive threats that failure to sign the standard format would entail unilateral cancellation of the allotment and total forfeiture of the hard-earned money already remitted. Being placed at an extreme

disadvantage with substantial financial stakes already tied up, the complainant had no choice or bargaining power but to sign on the dotted lines. The complainant asserts that the agreement constitutes a classic example of an "unfair contract" as statutorily defined under Section 2(46) of the Consumer Protection Act, 2019 and an "unfair practice" under Section 7 of the Real Estate (Regulation and Development) Act, 2016. In particular, the complainant assails the stark imbalance embodied in Clause 40(g) read with Clause 35 of the agreement: while the respondent curtailed its own liability for project delay to an illusory pittance of ₹5/- per square foot of the super area per month, it unilaterally reserved the draconian power under Clause 35 to charge penal interest ranging between 18% and 24% per annum for any default in instalment payments, alongside the threat of summary cancellation and forfeiture. The complainant relies squarely on the ruling of the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Limited v. Govindan Raghavan [Civil Appeal No. 12238/2018], the Law Commission of India's 199th Report on Unfair Terms in Contracts, and Section 2(za) of the RERA Act, 2016, which mandates absolute parity in the interest rates chargeable and payable between the developer and the allottee.

5. That in terms of Clause 40(a) of the Buyer's Agreement dated 07.07.2014, the respondent had explicitly covenanted to complete the construction and development of the apartment within 18 months, extendable by a grace period

of 6 months (totaling 24 months), which made the due date of legal possession strictly 07.07.2016. Although the allotment was structured on a Construction-Linked Payment Plan (CLP), the respondent routinely raised demands and extracted almost the entire consideration without achieving the corresponding physical construction milestones on site, failing completely to keep pace with the agreed delivery schedule. The respondent has allowed the project to languish in an ongoing delay of nearly ten years beyond the committed deadline, which constitutes gross negligence, willful default, and actionable deficiency in service as laid down by the Hon'ble Supreme Court in Lucknow Development Authority v. M.K. Gupta [1994 AIR 787]. It is specifically highlighted that at no point from the inception of booking till date did the respondent ever notify, establish, or plead any circumstance of force majeure or impediments beyond its reasonable control that could legally explain or excuse this extraordinary delay.

6. That instead of delivering legitimate, lawful possession, the respondent company recently issued communications styled as "Option for Offer of Possession" dated 12.01.2026 and 13.02.2026, which are sham, non-est, and contrary to the statutory framework of the RERA Act. The said letters were issued prematurely without obtaining a valid Occupation Certificate (OC) or Completion Certificate (CC) from the competent statutory authorities, and without completing the internal infrastructure or promised common amenities.

Furthermore, the statement of account annexed with the purported offer of possession unlawfully omitted to credit the statutory delayed possession interest lawfully accrued in favour of the complainant, while raising unwarranted fiscal demands and coercing the complainant into furnishing unilateral undertakings and indemnity bonds as a pre-condition for handover.

7. That the complainant, explicitly stating his intention to continue with the allotment, declares that the dispute falls squarely within the territorial and pecuniary jurisdiction of this Hon'ble Authority.

C. RELIEF SOUGHT

8. In view of the facts mentioned above, the complainant has prayed for the following relief(s):-

   i. Direct the Respondent to deliver Immediate & legal Possession of the unit of the complainant i.e. RHBH/Tower 23/Fifth/501 admeasuring 1280 sq ft in the project of the respondent, namely, "Omaxe Shubhangan, Bahadurgarh" situated at Village Kasar, Tehsil Bahadurgarh, Sector 4A, District Jhajjar, Haryana, after due completion and receipt of OC & CC along with all the promised amenities and facilities and to the satisfaction of the complainant;

   ii. Direct the respondent to pay prescribed rate of interest as per the Rera Act, on the amount already paid by the complainant from the promised date of delivery i.e. 07.07.2016 till the actual physical &

legal delivery of possession; and to also execute sale/conveyance deed;

iii. Pass an order restraining the respondent from charging any amount from the Complainant which do not form part of the Buyer's Agreement dated 07.07.2014 and/or is illegal and arbitrary against law, including but not limited to cost escalation charges, unilateral increase in Total sale price of the unit, delay penalty charges, illegal interest payable, GST charges, VAT charges, Club membership charges, illegal maintenance charges, levy of holding charges, enhanced charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant;

iv. And to further quash/set aside the alleged illegal Option of offer of possession dated 12.01.2026 & 13.02.2026 and to issue fresh offer of possession after due completion and receipt of all the certificates (OC & CC) and all other permissions, along with all the promised amenities and facilities as promised and charged for and to the full satisfaction of the complainant; & further issue a fresh statement of accounts as per the law & as per the sections/rules of the Rera Act; And to further quash/set aside the alleged requirement/demand of Undertakings/Indemnity illegally sought from the complainant by the Respondents at the time of taking possession;

v. That to issue any other relief or direction as this Hon'ble Authority may deem fit in view of facts and circumstances of present case.

D. REPLY ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent filed detailed reply on 24.09.2026 pleading therein:

10. That the respondent company has contested the complaint by filing its written reply through its authorized signatory and representative, Sh. Parveen Kumar (who has been duly authorized vide Board Resolution dated 02.07.2026 to institute, verify pleadings, depose, and contest the present matter). At the outset, the respondent has entered a blanket, categorical denial of each and every averment and contention raised in the complaint, terming the allegations to be a travesty of facts and a gross distortion of the true factual matrix.

11. That the respondent primarily challenges the maintainability of the complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016, contending that it has committed no infraction or breach of any statutory provision of the 2016 Act, and that the allegations do not fall within the statutory four corners of the Act.

12. That in terms of Clause 62 of the Apartment Buyer's Agreement, the alleged dispute ought to be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (as amended in 2015). The respondent asserts that amended Section 8 makes referral to an arbitral tribunal mandatory

notwithstanding any judicial precedent to the contrary, particularly because the issues raised involve complex questions of fact requiring voluminous evidence, thereby ousting the jurisdiction of this Authority.

13. Without prejudice to the plea of arbitration, the respondent assails the territorial jurisdiction of this Authority on the strength of Clause 63 of the Allotment Letter/Agreement, wherein the parties expressly agreed that, subject to arbitration, exclusive jurisdiction would lie only with the courts at Bahadurgarh and Delhi. Relying upon the doctrine of *expressio unius est exclusio alterius* and the law laid down by the Hon'ble Supreme Court in ABC Laminart Pvt. Ltd. v. AP Agencies [AIR 1989 SC 1239] and Swastik Gases P. Ltd. v. Indian Oil Corporation Ltd. [(2013) 9 SCC 321], the respondent submits that where parties have designated specific competent forums, an exclusion of all other courts and authorities is legally inferred, rendering such contractual ouster valid and divesting this Authority of territorial jurisdiction.

14. That the respondent refutes the complainant's claim regarding residential apartment no. RHBH/Tower-23/FIFTH/501 (super area 1,280 sq. ft.) in the project "Shubhangan (3-4 BHK)", Sector 4-A, Kassar Road, Bahadurgarh, as being baseless and misleading. The respondent denies that it ever coerced the complainant, delayed the issuance of the allotment letter (dated 20.11.2013), or compelled the complainant to execute a unilateral or non-negotiable Apartment Buyer's Agreement on 07.07.2014 under threats of cancellation and forfeiture. It is specifically highlighted that the complaint is conspicuously silent and

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devoid of any documentary proof showing that the complainant ever sought possession updates prior to instituting the present proceedings.

15. That under Clause 40(a) of the Apartment Buyer's Agreement dated 07.07.2014, the respondent argues that the proposed period of 18 months from the date of agreement or building plan approvals (whichever was later), along with a 6-month grace period (totaling 24 months), was not absolute but was expressly subject to force majeure conditions, circumstances beyond the developer's reasonable control, and timely payment of installments by the allottee. Furthermore, Clause 40(a) unequivocally mandates that the construction timeline must be computed by excluding Sundays, bank holidays, enforced government holidays, and all days during which work on the site ceased on account of orders passed by judicial forums or statutory legislative authorities.

16. That the respondent emphasizes that the allotment was governed by a Construction-Linked Payment Plan (CLP), requiring the complainant to strictly adhere to the schedule of payments; however, the complainant committed chronic and recurrent defaults in remitting the installment demands as and when they fell due. Drawing attention to the numerous demand letters and payment reminders issued to the complainant (annexed as Annexure R/1 Colly), the respondent asserts that under the express terms of Clause 40(a), any delay or default in payment by the allottee automatically operates to extend the possession date correspondingly. Relying upon Section 19(6) of the RERA Act,

2016, which casts a mandatory statutory responsibility on the allottee to make timely payments in the agreed manner, read with Section 19(7), which subjects delayed payments to statutory interest, the respondent argues that a defaulting allottee who has caused financial disruption cannot turn around and plead project delay against the promoter.

17. That the terms of the contract remain sacrosanct and binding upon both parties, and courts or regulatory authorities cannot rewrite agreed contractual terms, as authoritatively settled by the Hon'ble Supreme Court in Secretary, Bhubaneswar Development Authority v. Susanta Kumar Mishra [V (2009) SLT 242], PUDA v. Mrs. Shabnam Virk [II (2006) CPJ 1 (SC)], and Bharati Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd. [II (1996) CPJ 25 (SC)]. Consequently, in the event of any delay in handing over possession, the rights of the allottee are strictly circumscribed and governed by Clause 40(g) of the Allotment Letter/Agreement, which restricts the promoter's liability to compensation at the agreed rate of ₹5/- per square foot of super area per month for the period of delay.

18. The respondent states that it has invested hundreds of crores of rupees toward mobilizing resources, creating physical infrastructure, laying water pipelines, sewerage systems, installing electrical networks, and developing amenities to ensure a comfortable living environment for the allottees. However, project execution suffered an unprecedented cessation of work due to the outbreak of the Covid-19 pandemic, during which period the Government of India and this

Authority formally recognized and invoked force majeure protection for the real estate industry.

19. Finally, having already issued the "Option for Offer of Possession" letters dated 12.01.2026 and 13.02.2026, and expressing its readiness to settle delay compensation strictly under the contractual terms of Clause 40(g), the respondent maintains that the complainant has no legitimate cause of action to seek external statutory interest or the quashing of possession offers, and submits that the complaint represents an abuse and misuse of the legal process and is liable to be dismissed with costs.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

20. Ld. Counsel for the complainant and the respondent, both reiterated the same facts as stated in their pleadings. Further, Ld. counsel for complainant drew the attention of the Authority to inadvertent clerical and typographical errors in interim order dated 06.10.2026. It was pointed out that in paragraph 3 of the said order, it was inadvertently recorded that *"Ld. Counsel for the complainant seeks a short accommodation to examine the reply filed by respondent and to place a rejoinder on record, while reiterating the substantive averments set out in the complaint. Acceding to the request, the complainant is permitted to file their rejoinder within three weeks, with an advance copy supplied to the respondent"*, whereas learned counsel for the complainant had neither sought

time nor intended to file any rejoinder, choosing instead to rest the case on the complaint and documents already placed on record. It was further brought to notice that the appearance memo in the said order erroneously reflected the presence of *"Adv. Sushil Malhotra, Ld. Counsel for the Complainant through VC"* and *"Adv. Munish Gupta, Ld. Counsel for the Respondent through VC"*, whereas the matter was actually represented and argued by Adv. Arjun Kundra, Ld. Counsel for the Complainant and Adv. Arjun Sharma, Ld. Counsel for the Respondent, through VC.

F. ISSUES FOR ADJUDICATION

21. Whether the complainants in all the above captioned complaint is entitled to delay interest on the amount deposited by them along with interest in terms of Section 18 of RERA Act of 2016?

G. FINDINGS ON THE PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENT

G.1 Objection with regard to arbitration clause 63 of the agreement.

The Authority has considered the objection that the complaint is not maintainable in view of the Arbitration Clause 63 of the Builder Buyer Agreement. The presence of such a clause does not divest this Authority of the jurisdiction expressly conferred under the Real Estate (Regulation and Development) Act, 2016. The Hon'ble Supreme Court in ***Imperia Structures***

Ltd. vs. Anil Patni (2020) SC 822, held that statutory remedies under special legislations like RERA cannot be ousted by an arbitration clause. Accordingly, the Authority holds that it is competent to hear and decide the present matter and this objection of the respondent is rejected.

II. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

22. Taking note of submissions, the Authority finds that these are clerical and typographical oversights that warrant correction to reflect the true state of proceedings. The Authority hereby rectifies the order dated 06.10.2026 to the effect that paragraph 3 thereof shall stand substituted to reflect that *"learned counsel for the complainant does not wish to file any rejoinder to the reply filed by the respondent and opted to argue the matter on the basis of the existing pleadings on record"*; and the appearance memo in the order dated 06.10.2026 shall be read as "Adv. Arjun Kundra, Ld. Counsel for the Complainant through VC and Adv. Arjun Sharma, Ld. Counsel for the Respondent through VC". The order dated 06.10.2026 shall stand modified and read accordingly.

23. The Authority has carefully perused the facts of the complaint, the written reply filed by the respondent promoter, and the documents adduced on record by both parties. In light of the factual matrix, the Authority observes that the subject unit, bearing no. RHBH/Tower-23/FIFTH/501 (super area 1,280 sq. ft. / 118.91 sq. mtrs.), in the group housing project known as "Omaxe Shubhangan", Sector 4A, Village Kasar, Bahadurgarh, was originally booked and allotted to one Smt.

Sudesh Kumari vide allotment letter dated 20.11.2013 and subsequently endorsed/assigned in favour of the complainant, Lalit Kumar Sharma. Upon such lawful assignment, the complainant stepped into the shoes of the original allottee with all vested rights, entitlements, and liabilities. The parties entered into a Floor Buyer's Agreement dated 07.07.2014 for an agreed total sale consideration of ₹32,45,779.20/- (basic sale price of ₹29,29,779.20/-), against which the complainant had already deposited an aggregate sum of ₹30,55,828.57/- as reflected in the respondent's own statement of accounts and receipts on record, satisfying over 94.15% of the total consideration.

24. Authority observes that the ld. counsel for the respondent has been subtly urged during the course of arguments that the complainant, not being the original applicant and having stepped into the transaction through transfer/assignment, stands on a different footing and cannot claim equities or seek statutory delay compensation in parity with an original allottee. The Authority, therefore, deems it necessary to examine whether a subsequent purchaser/transferee who steps into the shoes of the initial allottee is entitled to the same statutory protections and reliefs as an original allottee under the provisions of the Act of 2016.

25. The term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the original

allottee. The definition of the allottee as provided in Section 2(d) of the Act of 2016 is reproduced as under:

> *"In this Act, unless the context otherwise requires— (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."*

Accordingly, following are allottees as per this definition:

(a) Original allottee: A 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.

(b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise. However, allottee would not be a person to whom any plot, apartment or building is given on rent.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v)

by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and the nomenclature "subsequent allottee" shall only remain for identification for use by the promoter. Therefore, the Authority does not draw any difference between the allottee and subsequent allottee per se.

26. The issue regarding the statutory rights of a subsequent allottee is no longer *res integra* and stands authoritatively settled by the Hon'ble Supreme Court of India in ***Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh*, 2021 SCC OnLine SC 1006**, wherein the Hon'ble Apex Court, while examining the rights of a purchaser who steps into the shoes of the original allottee, observed and held as under:

> *"31. .....it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat*

within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class."

27. Applying the ratio laid down by the Hon'ble Apex Court in *Laureate Buildwell (supra)* to the facts of the present case, the respondent promoter, having consciously accepted the assignment of allotment rights, endorsed the transfer, accepted substantial subsequent consideration directly from the complainant, and formally executed the Builder Buyer Agreement dated 07.07.2014 directly with him, cannot now blow hot and cold to dispute the status or statutory entitlements of the complainant. The complainant has stepped into the shoes of the allottee for all practical and legal intents and purposes with effect from 07.07.2014.

28. As per clause 40(a) of the apartment buyer's agreement dated 07.07.2014 respondent/developer was under an obligation to hand over the possession to the complainant within a period of 18 months along with an extended period of further 6 months, from the date of execution of the agreement, i.e by

07.07.2016. Possession clause 40(a) of the builder buyer's agreement dated 21.04.2014 is reproduced here for ready reference:

> *"The Company shall complete the development/construction of the Unit/Project within 18 (Eighteen) months from the date of signing of this Agreement by the Buyer(s) or within an extended period of 6 (Six) months. Completion of development of the Unit within such 24 (Twenty Four) months is subject to force majeure conditions [as mentioned in Clause (b) hereunder] and subject to timely payment by the Unit Buyer(s) or subject to any other reasons beyond the control of the Company. No claim by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of the aforesaid reasons and the Company shall be entitled to a reasonable extension of time for the delivery of possession of the said Unit to the Buyer(s). The aforesaid period of development shall be computed by excluding Sundays, Bank Holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any Judicial/ concerned State Legislative Body."*

29. Admittedly delivery of possession of the unit in question has been delayed beyond the stipulated time. Respondent has attributed this delay in construction to disruption in construction activity due to COVID-19 outbreak and delay in payment of instalments by the complainant/allottee. In this regard it is observed that the COVID-19 outbreak hit construction activities post 22.03.2020, whereas the delivery of possession of the unit in question was to be handed over by 18.04.2016. Therefore, as far as delay in construction due to outbreak of

Covid-19 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** 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,2018. 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 August, 2022 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*"

30. Respondent cannot be allowed to take the plea of force majeure conditions towards delay caused in construction of the project/delivery of possession as the same did not affect the construction activities at the site of the project during the proposed possession timeline.

31. The respondent has sought to resist the claim of delayed possession interest by alleging that the complainant was a chronic defaulter who consistently delayed installment payments despite reminders placed on record as Annexure R-1. The Authority has carefully perused and scrutinized these reminders alongside the statement of accounts on record.

32. A perusal of the record reveals that prior to the contractual due date of possession (21.04.2016), only a single reminder, dated 01.12.2012, was issued, which was duly honoured by the complainant on 07.12.2012. All subsequent reminders relied upon by the promoter were issued well after the expiry of the committed delivery timeline. Notably, reminders dated 15.09.2016 and 01.10.2016 were issued for milestone demands under the head *"On Casting of Sixth Floor"*; reminders dated 18.03.2017 and 01.04.2017 pertained to *"On Casting of Eighth Floor"* and *"On Completion of Brick Work of the Floor"*; and the reminder dated 03.08.2019 related to *"On Completion of External Plaster of the Floor"*. These reminders themselves demonstrate that basic structural and finishing works were being carried out years after the promised completion date, confirming that the project was lagging significantly behind schedule. More importantly, the respondent accepted all subsequent payments without demur or protest, never initiated cancellation proceedings, and progressively collected an aggregate sum of ₹30,55,828.57/- against the total sale consideration of ₹32,45,779.20/-. By continuously demanding and accepting

substantial consideration, keeping the agreement alive, and failing to achieve construction milestones within the stipulated timeframe, the promoter cannot now take refuge behind an artificial plea of payment default to evade its statutory liability under the Act.

33. One of the averments of the respondent is that the provisions of the RERA Act, 2016 will not apply to agreements executed prior to the coming into force of the Act, and further that the relationship between builder and buyer in the present case is strictly governed by the agreement dated 07.07.2016 executed between them, which specifically provides for delay compensation at the nominal rate of ₹5/- per square foot per month. The respondent has accordingly argued that the allottee cannot claim statutory interest under the provisions of the RERA Act by bypassing the agreed compensation clause. In this regard, the Authority observes that after the coming into force of the RERA Act, 2016, the jurisdiction of civil courts is barred by Section 79 of the Act. The Authority, however, is deciding disputes between builders and buyers strictly in accordance with the terms of the provisions of flat buyer agreements. After the RERA Act of 2016 came into force, the terms of agreements are not re-written; the Act of 2016 only ensures that whatever were the obligations of the promoter as per the agreement for sale, the same must be fulfilled by the promoter within the stipulated time agreed upon between the parties. The issue regarding the opening of agreements executed prior to the coming into force of the RERA

Act, 2016 was already dealt with in detail by this Authority in ***Complaint No. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd., decided on 16.07.2018.*** Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."*

Further, as per the recent judgment of the Hon'ble Supreme Court in ***M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. & Ors. (supra),*** it has already been held that projects in which a completion certificate has not been granted by the competent authority fall squarely within the ambit of the definition of ongoing projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Insofar as the respondent's contention regarding restricting the delay compensation to ₹5/- per square foot per month

is concerned, once the project is an ongoing project and default in delivery of possession subsists post-commencement of the Act, the statutory remedy under Section 18(1) proviso read with Rule 15 of the HRERA Rules, 2017 mandating payment of interest at the prescribed rate (SBI MCLR + 2%) takes precedence over one-sided, illusory clauses of pre-RERA agreements. Furthermore, as per Section 34(e) of the Act of 2016, it is the statutory function of the Authority to ensure compliance with the obligations cast upon promoters, allottees, and real estate agents under this Act and the rules and regulations made thereunder. Therefore, this Authority has complete jurisdiction to entertain the captioned complaint and award statutory delay interest as prescribed by law.

34. Authority observes that after a lapse of 9 years, respondent has offered possession of unit on 12.01.2026 & 13.02.2026. Complainant has challenged the validity of offer of possession. In this regard, it is an undisputed position on record that the respondent had not obtained the occupation certificate (OC) or completion certificate (CC) from the competent statutory authority in respect of the subject tower and unit prior to issuing the said letters. The issuance of an occupation certificate is not a mere procedural formality, it is a vital statutory safeguard certifying that the building is structurally sound, safe for human habitation. Offering an allottee possession of an uncertified structure amounts, in direct violation of statutory building bye-laws and the provisions of the Real Estate (Regulation and Development) Act, 2016. Consequently, the offers of

possession dated 12.01.2026 and 13.02.2026 cannot be recognized as valid, and legal in the eyes of law.

35. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations to hand over possession within stipulated time as cast upon it under RERA Act, 2016 and consequently the complainant is entitled to delay "interest" from 07.07.2016 till the date of offer of a legally valid possession to the complainant after obtaining occupation certificate from the competent Authority.

36. The 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"

37. As per the website of the State Bank of India (https://sbi.co.in), the highest Marginal Cost of Lending Rate (MCLR) as on 03.11.2026 is 8.95%. Accordingly, in terms of HRERA rules, the prescribed rate of interest shall be MCLR + 2% = 10.95% per annum.

38. The complainant has prayed for interest @18% per annum. However, the RERA Act, 2016, read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, prescribes interest at the rate of SBI MCLR + 2%, which, as on date, works out to be **10.95% per annum**. Accordingly, the interest shall be calculated and awarded at this statutory rate.

39. Authority has got calculated the total amounts along with interest and monthly interest as per detail given in the table below:

Sr. No.	Amount Paid (in ₹)	Due date of Possession or date of payment whichever is later	Interest (in ₹) till 03.11.2026
1.	19,70,162.05/-	07.07.2016	22,29,435
2.	2,98,758.99/-	11.01.2017	3,21,226
3.	1,49,379.92/-	06.04.2017	1,56,804
4.	1,49,379.92/-	11.04.2017	1,56,580
5.	1,49,378.54/-	31.08.2017	1,50,215

6.	6,668.69/-	04.10.2017	6,638
7.	1,42,710.89/-	09.09.2019	1,11,871
8.	1,89,379.51/-	16.01.2021	1,20,332
Total			32,53,101
9.	Monthly interest - ₹27,502/-		

I. DIRECTIONS OF THE AUTHORITY

40. Hence, the Authority hereby passes this order and issue 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 the complainant upfront amount as provided in table in para 39 of this order. Further, respondent's liability for paying monthly interest of as shown in above table will commence w.e.f. 04.11.2026 and it shall be paid on monthly basis till legally valid offer of possession is made to complainant after obtaining occupation certificate from the competent authority.

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. Respondent shall offer possession of the unit to complainant within 30 days of obtaining occupation certificate and the complainant shall also accept the same within next 30 days.

iv. Complainant shall remain liable to make payment due at the time of offer of possession strictly as per the builder buyer agreement.

41. Accordingly, the case is **Disposed of**. File be consigned to the record room after uploading of order on the website of the Authority.

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DR. GEETA RATHEE SINGH
[MEMBER]