HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	**1642 of 2024**
Date of Filing:	**15.10.2024**
First Date of Hearing:	**19.11.2024**
Date of Decision:	**03.11.2026**

Sunil Babbar
H. No. 1/58, Sunder Vihar,
Paschim Vihar, New Delhi, 110087 .....COMPLAINANT

Versus

Omaxe Limited
7, Local Shopping Centre,
Kalkaji, New Delhi. .....RESPONDENT

Present: Adv. Neeraj Goel, Ld. Counsel for the Complainant through VC.

Adv. Manjinder Kumar, Ld. Counsel for the 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

Rathee

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	"Shubhangan", 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	VHBH/Tower-2/Second/201
5.	Date of Floor Buyer Agreement	27.12.2016
6.	Possession clause 40(a) as per BBA dated 27.12.2016	The Company shall complete the development/construction-of-the-Unit/Project within 60 (Sixty) 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 66 (Sixty Six) 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	27.09.2022
8.	Total Sale Consideration	₹31,32,000/- (as per BBA dated 27.12.2016)
9.	Amount paid by the complainant	₹30,58,299.23/-
10.	Occupation Certificate	Memo No. ZP-448-Vol.II/JD(RA)/2026/7678 dated

		05.03.2026
11.	Offer of Possession	10.04.2026
12.	Physical Handover of Possession	13.07.2026

B. FACTS OF THE COMPLAINT AS MENTIONED IN THE COMPLAINT

3. That the complainant, a citizen of India residing at House No. 1/58, Sunder Vihar, Paschim Vihar, New Delhi-110087, applied for the allotment of a 2-BHK residential unit comprising a super area of 1,300 sq. ft. vide application dated 04.05.2013 in the respondent's group housing project named "Grand Omaxe Bahadurgarh" (formerly known as "Shubhangan Bahadurgarh"), situated at Sector 35, Bahadurgarh, Haryana. The respondent accepted the said application and issued a Provisional Allotment Letter dated 11.03.2015, provisionally allotting Unit No. 2 on the Ground Floor in Queenston Tower-B (Annexure C-1). Subsequently, the respondent vide forwarding letter dated 14.12.2016 transmitted an original Builder Buyer Agreement (Annexure C-2), wherein the allotted unit was re-designated as Property No. VHBH/Tower-2/Second/201 in "Shubhangan (2BHK)". Both parties duly executed the Builder Buyer Agreement on 27.12.2016 for an agreed total sale consideration of ₹31,32,000/-, which was inclusive of all basic and allied charges.

4. That in terms of Clause 40(a) of the executed Builder Buyer Agreement, the respondent undertook and bound itself to hand over physical possession of the said residential unit within a period of 60 months from the date of execution of the agreement, which arrived at the specific committed due date of possession as 27.12.2021. Despite the lapse of several years beyond this stipulated date, the respondent promoter has failed to complete the construction of the project, obtain the requisite occupation certificate, or offer lawful physical possession to the complainant, thereby causing an inordinate and continuous delay of nearly three years.

5. That the complainant has regularly fulfilled all financial demands raised by the respondent, having already deposited an amount of ₹16,60,205.23/- at the time of execution of the Builder Buyer Agreement. The complainant continued making subsequent payments strictly against the respondent's demands across multiple instalments, as evidenced by official receipts dated 19.02.2016, 21.03.2016, 07.05.2016, 19.05.2016, 27.06.2016, 13.09.2016, 15.03.2017, 05.06.2017, 30.07.2018, and 06.08.2018 (Annexure C-4 Colly). As confirmed by the respondent's own Statement of Account dated 10.08.2018 (Annexure C-5), the complainant has deposited an aggregate sum of ₹30,58,299.23/- out of the total demanded amount of ₹31,13,419/-, thereby satisfying approximately 98% of the total sale consideration without default.

6. That whenever the complainant noticed negligible construction progress at the site and verbally conveyed distress, the respondent's officials falsely assured that the development pace would be accelerated and adjusted in future timelines. However, the respondent completely abandoned its contractual and statutory commitments while enjoying the wrongful gains of the complainant's hard-earned money, causing acute mental harassment and financial hardship.

7. That such unilateral, unjustified, and indefinite delay in handing over possession constitutes a blatant deficiency in service, breach of trust, and direct contravention of the obligations cast upon the promoter under Sections 18 and 19 of the Real Estate (Regulation and Development) Act, 2016. The complainant submits that it is well-established by the Hon'ble Supreme Court of India in *Wg. Cdr. Rahman Khan v. DLF Southern Homes Pvt. Ltd.* [(2020) 16 SCC 512], *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* [(2019) 5 SCC 725], and *Fortune Infrastructure v. Trevor D'lima* [(2018) 5 SCC 442], as well as by this Hon'ble Authority in *Simmi Sikka v. EMAAR MGF Land Ltd.* (Complaint No. 7 of 2018), that an allottee cannot be made to wait indefinitely for possession, nor can a promoter take shelter under one-sided clauses or nominal penalty terms. Consequently, the complainant has approached this Hon'ble Authority seeking a direction against the respondent for immediate delivery of lawful physical possession along with delayed

possession interest for every month of delay from the committed due date till the actual handing over of possession, together with costs of litigation.

C. RELIEF SOUGHT

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

   i. A direction shall be given to the respondent company for handing over the possession of allotted residential flat/unit to the complainant as per the agreed terms of the agreement to sell, may be issued.

   ii. An order to pay the delay in possession charges i.e., 18 % per annum interest on the amount paid by the complainant i.e., ₹30,58,299.23/- as agreed in clauses of the agreement to sell, may kindly be issued.

   iii. A direction to the respondent to refund of all legal cost of ₹1,00,000/- (One Lakh Only) incurred by the complainant including cost related to this Complaint; may kindly be issued.

   iv. Issue of such other appropriate order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case and in the interest of Justice, Equity and Good Conscience.

D. REPLY ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent filed detailed reply on 21.03.2025 pleading therein:

10. That the respondent, contesting the complaint through its Authorized Signatory Mr. Parveen Kumar pursuant to a valid Board Resolution, respectfully submits at the threshold that the instant complaint in its present form is wholly misconceived, untenable, and not maintainable under Section 31 of the Real Estate (Regulation and Development) Act, 2016, as the answering respondent has neither contravened nor violated any provisions of the Act. The respondent emphatically raises a preliminary objection under Section 8 of the Arbitration and Conciliation Act, 1996 (as amended in 2015), stating that Clause 62 of the allotment letter/builder buyer agreement mandates the referral of all disputes to arbitration. The filing of the present reply is strictly without prejudice to this right, without submitting to the jurisdiction of this Authority or waiving the plea for arbitration, particularly since the dispute involves complex questions of fact and voluminous evidence that cannot be adjudicated summarily. Furthermore, the respondent challenges the territorial jurisdiction of this Authority, as Clause 63 of the agreement explicitly confers exclusive jurisdiction upon the Courts at Bahadurgarh/Delhi. In terms of the law laid down by the Hon'ble Punjab and Haryana High Court, once parties have contractually agreed upon an exclusive territorial forum, alternative jurisdictions stand ousted. Additionally, the complaint is not maintainable as the underlying agreement was executed on 27.12.2016, prior to the coming into force of the RERA Act, 2016. The respondent also submits that the complaint is hopelessly barred by the law of

limitation, inasmuch as the complainant's own case reveals that his last payment was made way back in August 2018, rendering the present action time-barred.

11. That the complainant applied for and was allotted Unit No. VHBH/TOWER-2/Second/201, admeasuring a super area of approximately 1,110 sq. ft., in the residential project "Shubhangan" situated at Sector 35, Bahadurgarh, Haryana. The respondent vehemently denies being in default of delivery timelines and asserts that it is the complainant who has consistently defaulted in making stage-wise payments as per the agreed construction-linked payment plan. Despite several demand and reminder letters served upon him (annexed as Annexure R-1 Colly), the complainant wilfully failed to clear his outstanding dues. In terms of Section 19(6) of the RERA Act, every allottee is under a mandatory statutory obligation to make timely payments as specified in the agreement, and the promoter's obligation to offer possession is reciprocal and contingent upon such compliance. Having defaulted on his payment obligations, the complainant is legally disentitled from alleging delay or claiming any interest or compensation whatsoever. The respondent also denies the false allegation that the complainant ever approached the respondent or issued any written communication demanding physical possession prior to the filing of the present complaint, and the complainant has placed not a single document on record to substantiate such a claim.

12. That the complainant has concealed material facts by misrepresenting the possession period as 60 months, whereas Clause 40 of the builder buyer

agreement explicitly provides a completion period of 66 months (being 60 months plus a 6-month grace period). The respondent submits that any delay in completion has been purely unintentional and beyond its control, occasioned by acute downturns in the real estate sector over the preceding 3 to 5 years, which were severely exacerbated by the COVID-19 pandemic from March 2020 onwards. The Government duly recognized this unprecedented crisis by notifying the pandemic period as a *force majeure* event and granting a blanket 6-month extension to real estate projects. In mega-projects of this scale, unforeseen operational bottlenecks inevitably arise, which cannot be attributed to any willful omission or negligence on the part of the respondent.

13. That no cause of action has accrued to the complainant, as the executed agreement already incorporates a mutually agreed delay compensation clause providing for the payment of ₹5/- per square foot per month. The respondent has never refused to honor its contractual commitments thereunder, and therefore, the institution of the present complaint is an abuse of process. The complainant, having voluntarily executed the agreement, cannot be permitted to approbate and reprobate by relying on the agreement for possession while simultaneously repudiating the agreed delay compensation clause to seek exorbitant statutory interest under the RERA Act. Settled jurisprudence laid down by the Hon'ble Supreme Court of India 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 [II (1996) CPJ 25 (SC)] firmly establishes that parties are strictly bound by the terms and conditions of a concluded contract, which courts and tribunals cannot alter. Accordingly, the respondent prays that the complaint, being devoid of merit, be dismissed with costs.

E. REJOINDER FILED BY THE COMPLAINANT ON 08.09.2025

14. That the present complaint is maintainable before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter "RERA Act"), as the subject project is situated within Haryana. The respondent's reliance on Clause 62 of the Builder Buyer Agreement regarding mandatory arbitration does not oust the statutory jurisdiction of this Authority. In terms of Section 88 of the RERA Act read with the Arbitration and Conciliation Act, the statutory remedies under RERA operate in addition to, and not in derogation of, other laws. Similarly, the objection regarding territorial jurisdiction founded on Clause 63 of the agreement is untenable and contrary to Sections 31 and 37 of the RERA Act, which vest jurisdiction in the Regulatory Authority to adjudicate disputes arising from promoter defaults and delayed possession. Furthermore, the plea that the complaint is non-maintainable because the agreement predates the enactment of RERA is contrary to settled law, as the RERA Act applies to ongoing projects where completion had not been achieved. The objection regarding limitation is likewise groundless, as

delay in handing over possession constitutes a continuous and subsisting cause of action that accrues daily until possession is delivered.

15. That the respondent's contention branding the complainant as a payment defaulter under Section 19(6) of the Act is factually incorrect and belied by the record. The complainant has remitted ₹30,58,299.23/- out of the total consideration, as substantiated by receipts (Annexure C-4 Colly) and the statement of account (Annexure C-5). In terms of the law laid down by the Hon'ble Supreme Court in *K. Raheja Constructions v. Union of India* (2020) and *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019), a promoter cannot withhold possession or set up alleged payment delays as a defense when the underlying delay in project completion is attributable to the promoter's own default. The assertion that the complainant never demanded possession prior to approaching this Authority is also contrary to the record, which reflects continuous written and verbal communications from 2016 onwards expressing concern over lack of progress and seeking possession.

16. That the respondent cannot seek refuge under force majeure or COVID-19 pandemic notifications to justify default. The committed date of possession under the agreement was 27.12.2021, and the project remains incomplete years beyond the stipulated period and permissible grace periods, without the respondent having formally notified or established any force majeure event

under the agreement. The delay in delivering possession violates Sections 12 and 19 of the RERA Act, directly entitling the complainant to statutory relief.

17. That under Section 18(1) of the RERA Act, the promoter is statutorily bound to pay interest at the prescribed rate for every month of delay until the actual handing over of physical possession. The nominal compensation clause in the agreement providing ₹5/- per square foot per month is one-sided, unfair, and unconscionable, and does not restrict or override the complainant's right to claim statutory interest at prescribed rates. In *Wg. Cdr. Rahman Khan v. DLF Southern Homes Pvt. Ltd.* (2020) and *Pioneer Urban Land & Infrastructure Ltd.* (supra), the Hon'ble Supreme Court held that one-sided agreements and arbitrary terms cannot bar allottees from seeking statutory remedies against indefinite delays. Because RERA is a beneficial legislation intended to protect allottees from unfair practices, the complainant is entitled to physical possession of the unit along with statutory delay interest and compensation for the protracted hardship endured.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

18. Ld. Counsel for the complainant and the respondent, both reiterated the same facts as stated in their pleadings.

G. ISSUES FOR ADJUDICATION

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

H. FINDINGS ON THE PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENT

H.1 Objection with regard to maintainability of complaint on ground that it is barred by limitation

The respondent has raised a preliminary objection that the present complaint is barred by limitation on the ground that complaint is filed by the complainant after considerable time from the earlier order and over 6 years from the last payment was made. Authority observes that provisions of the Limitation Act, 1963 are not strictly applicable to proceedings under the Real Estate (Regulation and Development) Act, 2016, as the Authority constituted under the Act is a quasi-judicial body and not a civil court. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court in ***M.P. Steel Corporation v. Commissioner of Central Excise*** (Civil Appeal No. 4367 of 2004), wherein it was held that the Limitation Act primarily governs proceedings before courts and does not automatically apply to tribunals or statutory authorities unless specifically provided.

H.2 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.

H 3. Objection with regard to the maintainability of the complaint on the ground that the provisions of Real Estate (Regulation and Development) Act, 2016, are prospective and not retrospective in nature and its provisions cannot be invoked in respect of acts alleged to have taken place prior to promulgation.

Respondent in its reply has raised an objection that the provisions of RERA Act, 2016 cannot be applied retrospectively. Reference can be made to the case titled ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc.*** (supra), wherein the Hon Apex Court has held as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale*

of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

I. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

20. The Authority has gone through the facts of the complaint as submitted by the complainant and the written reply filed by the respondent. In light of the factual background of the matter, the Authority observes that there is no dispute with regard to the fact that the complainant, Sunil Babbar, applied for allotment of a 2-BHK residential apartment in May 2013 in the respondent's project "Grand Omaxe Bahadurgarh" (formerly known as "Shubhangan Bahadurgarh"), Sector

35/Sector 4-A, Bahadurgarh. Pursuant to the said application, the respondent promoter initially issued a Provisional Allotment Letter dated 11.03.2015 whereby the complainant was provisionally allotted Unit No. 2, having a super area of 1,300 sq. ft., on the Ground Floor in Queenston Tower-B (Annexure C-1). Subsequently, the respondent re-designated the allotted property as Unit No. VIIBH/Tower-2/Second/201 in "Shubhangan" and executed the Builder Buyer Agreement dated 27.12.2016 directly with the complainant for a total sale consideration of ₹31,32,000/- (inclusive of basic and allied charges), against which the complainant deposited an aggregate sum of ₹30,58,299.23/- as confirmed by the statement of account dated 10.08.2018 on record.

21. As per clause 40(a) of the builder buyer's agreement dated 27.12.2016, the respondent/developer was under an obligation to complete the construction and hand over possession of the unit to the complainant within a period of 60 months along with an extended grace period of 6 months, from the date of execution of the agreement, i.e., by 27.12.2021. Possession clause 40(a) of the builder buyer's agreement dated 27.12.2016 is reproduced here for ready reference:

> *"The Company shall complete the development/construction-of-the-Unit/Project within 60 (Sixty) 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 66 (Sixty Six) 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."

22. 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 on account of various force majeure circumstances, particularly the COVID-19 pandemic, lockdown restrictions, shortage of labour and material and disruption of supply chains. The respondent has relied upon the nationwide lockdown commencing from 25.03.2020 and the subsequent restrictions imposed from time to time.

23. In this regard, Authority observes that COVID-19 pandemic and the resultant nationwide lockdown imposed by the Central Government led to the large-scale reverse migration of labourers, disruption in the supply chain of construction materials, and a temporary halt to construction activities across the country. In furtherance of the advisory issued by the Ministry of Housing and Urban Affairs, real estate regulatory authorities across the country, including the

Haryana Real Estate Regulatory Authority, granted a general extension of six months to ongoing projects, which was subsequently extended by a further period of three months in the year 2021 on account of the second wave of the pandemic. As per the HRERA notifications dated 26.05.2020 and 02.08.2021, an aggregate extension of 9 months is admissible for projects having their completion or due date falling on or after 25.03.2020. In the present case, the contractual completion date of the subject unit was 27.12.2021, which falls squarely after 25.03.2020.

24. The record reveals that during this entire pandemic-affected period, the respondent promoter neither raised any progressive construction-stage demand nor demanded or accepted any instalment payments from the complainant. It is a well-settled principle of equity that "he who seeks equity must do equity." Equity operates on reciprocal fairness and cannot be applied as a one-way street solely to absolve a promoter of contractual delay while ignoring the mutual balance between the contracting parties. Since both parties recognized the extraordinary disruption and the respondent chose not to enforce payment demands during that period, granting the statutory 9-month force majeure extension fairly reconciles the equities on both sides without prejudicing either party. Therefore, extending the committed due date of 27.12.2021 by the permissible 9 months yields the revised due date for handing over possession as

27.09.2022. However, even upon the expiry of this extended benchmark date, the respondent failed to deliver physical possession of the unit.

25. The respondent has further sought to resist the claim of delay interest by alleging that the complainant was a defaulter who delayed payment of instalments despite reminders placed on record as Annexure R-1. The Authority has scrutinized the said demand reminders alongside the receipts and statement of accounts on record. It is revealed that against the total demanded amount of ₹31,13,419/-, the complainant had already remitted an aggregate sum of ₹30,58,299.23/- by August 2018, which represents approx. 98% of the total consideration. The respondent accepted all such payments without demur, never initiated cancellation proceedings, and progressively retained substantial consideration.

26. The Authority finds that it is not in dispute that the complainant received the offer of possession dated 10.04.2026. This is borne out from the record, specifically the application dated 12.05.2026 moved by the complainant, wherein the letter of offer of possession dated 10.04.2026 along with the statement of accounts and occupation certificate dated 05.03.2026 was placed on record. Further, as recorded in the interim order dated 25.08.2026, learned counsel for the complainant appeared and submitted before this Authority that actual physical possession of the subject unit was handed over to the complainant on 13.07.2026. A perusal of the offer of possession dated

10.04.2026 makes it evident that the respondent called upon the allottee to clear outstanding dues, if any, and proceed with taking over possession and registration of the conveyance deed in respect of the booked unit. Accordingly, the offer of possession dated 10.04.2026, having been issued subsequent to the grant of Occupation Certificate dated 05.03.2026, constitutes a valid and effective offer of possession. Consequently, the respondent's liability to pay delayed possession interest under Section 18(1) of the Act of 2016 shall cease to accrue on 10.04.2026.

27. 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 27.12.2016 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.

In this regard, it is pertinent to examine Clause 40(a) of the Builder Buyer Agreement dated 27.12.2016, which is reproduced hereunder for ready reference:

> *"The Company shall complete the development/construction-of-the-Unit/Project within 60 (Sixty) 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 66 (Sixty Six) 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."

A plain perusal of the aforesaid clause reveals that the agreement does not provide for any mechanism or agreed quantum of compensation for delay in favour of the allottee; on the contrary, it seeks to exonerate the developer by stipulating that no claim by way of damages or compensation shall lie against the company. The respondent promoter has accordingly sought to contend that in the absence of any contractual provision, no compensation or delay charges can be awarded against it.

The Authority observes that the statutory scheme of the Act of 2016 clearly bifurcates and recognizes "interest for delay" and "compensation" as two parallel, distinct, and independent remedies available under Section 18. Sections 18(1) and 18(3) of the Act of 2016 are reproduced hereunder for ready reference:

"18. Return of amount and compensation.—

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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.

...

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

A harmonious construction of the statutory framework reveals that where an allottee elects not to withdraw from the project, the relief granted by this Authority is delayed possession charges (DPC) by way of statutory interest under the proviso to Section 18(1) of the Act. This 'delay interest' accrues for every month of default at the rate prescribed under Rule 15 of the HRERA Rules, 2017 (SBI highest MCLR + 2%).

It is clear that the complainant is claiming statutory delay interest on the amounts deposited by him rather than compensation. Under the scheme of the Act, the grant of delay interest is an independent statutory right vested in the allottee who chooses to stay in the project, and the complainant is well within his legal rights to get the same enforced. Since, interest for delay under section 18(1) is a statutory interest which an allottee is entitled in case of any delay, Authority is fully empowered to grant delay interest at the statutory prescribed rate.

28. The Authority further observes that along with the offer of possession dated 10.04.2026, the respondent promoter had furnished a detailed statement of account reflecting the outstanding financial dues and demanding a balance sum of ₹4,05,010.42/-. The record reveals that ample and fair opportunity was extended to the complainant to scrutinize the said statement of accounts and raise objections or contest any specific demand heads, if aggrieved. Authority, vide its interim order dated 25.08.2026, afforded an express opportunity to the complainant to scrutinize the said computation and submit specific objections,

if any. The relevant extract of the order dated 25.08.2026 is reproduced hereunder for ready reference:

> *"3. Furthermore, ld. counsel for the complainant sought adjournment to submit specific objections regarding the statement of accounts furnished by the respondent.*
>
> *4. Acceding to the request, the Authority grants the complainant 10 days to file objections, with an advance copy served upon the opposite party. The respondent shall be at liberty to file a response/counter-reply within 10 days of receiving the said objections, with an advance copy furnished to the complainant.*
>
> *5. Case is adjourned to 03.11.2026 for further arguments if any and consideration."*

Despite the explicit liberty granted by this Authority, the complainant chose not to file any objections or point out any discrepancy, or calculation error in the statement of accounts tendered by the promoter. The principles of natural justice require that once an opportunity to rebut a financial statement is consciously granted and not availed, the doctrine of acquiescence and non-traverse operates against the party remaining silent. The legal process cannot be kept open-ended, where an allottee is provided a fair forum to dispute accounts and elects not to contest the figures, the accounts placed on record must be treated as verified and accepted between the parties. Consequently, in the

absence of any demur or objection from the complainant, the statement of account demanding a balance sum of ₹4,05,010.42/- issued alongside the offer of possession letter dated 10.04.2026 has attained finality and the outstanding balance reflected therein shall be adjusted against the delayed possession interest determined by this Authority.

29. It is pertinent to observe that despite making a substantial amount of payments towards booking of unit. Complainant had invested their hard earned money in the project with hopes of timely delivery of possession. Since complainant is not interested to withdraw from the project and wants to continue with the project. Consequently, the complainant is held entitled to delayed possession interest on the amount deposited by them with the respondent, calculated with effect from the committed due date of possession, i.e., 27.09.2022, up to the date of the valid offer of possession, i.e., 10.04.2026.

30. 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"

31. 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.

32. 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.

33. 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 offer of possession i.e., 10.04.2026
1.	₹30,58,299.23/-	27.09.2022	₹11,89,984/-
	Total		**₹11,89,984/-**

34. The complainant is seeking ₹1,00,000/- as litigation cost. It is observed that the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 6745-6749 of 2021, M/s Newtech Promoters and Developers Pvt. Ltd. v. State of U.P. & Ors. (supra)***, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18, and 19 of the RERA Act, 2016. The Court further clarified that such claims are to be adjudicated by the learned Adjudicating Officer under Section 71 of the Act, 2016, and the quantum of compensation and legal expenses is to be determined having due regard to the factors enumerated in Section 72 of the Act, 2016. Accordingly, the Authority observes that the claim for compensation and litigation costs cannot be adjudicated in the present proceedings.

The complainants are, therefore, advised to approach the learned Adjudicating Officer for seeking relief in respect of compensation and litigation expenses.

J. DIRECTIONS OF AUTHORITY

35. 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. That, the respondent is directed to pay upfront delay interest of ₹7,84,973.58/- (₹11,89,984 - ₹4,05,010.42) i.e., after adjusting the final demand raised by the respondent of ₹4,05,010.42/-, to the complainant towards the delay already caused in handing over possession within a period of 90 days from the date of this order, failing which legal consequences shall follow.

36. **Disposed of.** Files to be consigned to record room after uploading of order on website.

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