HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	**646 of 2024**
Date of Filing:	**03.05.2024**
First Date of Hearing:	**23.07.2024**
Date of Decision:	**13.11.2026**

Mohanbir Kaur
W/o Sh. Guljeet Singh
R/o H.No. B-135, Naraina Vihar,
New Delhi-110028 .....COMPLAINANT

VERSUS

Konark Rajhans Estates Pvt. Ltd. through its Director
Village Kot, Sector-14, Panchkula Ext-II,
District Panchkula, Haryana .....RESPONDENT

Coram: **Sh. Chander Shekhar** **Member**

Hearing: **10th**

Present: Mr. Arjun Kundra, Advocate for the Complainant through VC.
Mr. Viren Sibal, Advocate for the Respondent through VC.

ORDER:

Present complaint was filed on 03.05.2024 by the complainant under Section 31 of The Real Estate (Regulation and Development) Act, 2016 (for short RE(RD) Act, 2016) read with Rule 28 of The Haryana Real Estate

(Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the RE(RD) Act, 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:

Sr. No.	Particulars	Details
1.	Name of the project	Asha Panchkula, Sector-14, Panchkula Extension-II, Haryana
2.	Nature of the project	Residential
3.	RERA Registered/not Registered	Registered vide Registration No. 173 of 2017 dated 29.08.2017
4.	Details of Unit	Apartment No. B-1212, Tower-B, Type 2 BHK (corner or park facing unit) measuring 1110 sq. ft.
5.	Date of allotment	Provisional allotment letter dated 03.04.2017 (Original Provisional allotment letter dated 27.05.2016)
6.	Date of Apartment Buyer's Agreement	03.04.2017
7.	Possession clause in BBA (Clause 9)	*"the company based on the present plans and estimates contemplates to offer possession of the said apartment to the apartment allottee within a period of 36 months from the receipt of the first instalment*

		against allotment of the said apartment plus a grace period of 6 months, unless there shall be delay or failure due to Force Majeure conditions and due to failure of apartment allottee(s) to pay in time the total sale price and other charges and dues/payments..." *Note: The first installment was made on 24.06.2016 as per the receipt attached with the complaint.*
8.	Due Date of possession	24.12.2019 (36months+6months)
9.	Total Sale Consideration	₹25,80,800/- (Basic Sale Price-₹19,10,310/-)
10.	Amount Paid by the Complainant	₹23,97,213/- (as stated in the complaint)
11.	Whether occupation certificate received or not.	Not Obtained
12.	Handing over possession/Possession certificate	Possession not offered

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. The complainant has stated that she decided to book a residential apartment in the project namely Asha Panchkula Kot Village, Sector-14, Panchkula Extension-II, District Panchkula, Haryana after relying upon the representations, assurances and promises made by the promoter.

4. The complainant on 04.03.2016 submitted an application on the pre-printed application form provided by the respondent and paid a sum of

₹5,000/- towards the application money for booking a residential apartment bearing No. C-1201, Tower-C, Type 2BHK (Corner or Park Facing Unit), measuring 1110 sq. ft. (approximately 103.12 sq. metres) in the said project.

5. The complainant stated that vide allotment letter dated 27.05.2016, the respondent allotted Apartment No. C-1201, Tower-C in the said project. A copy of the allotment letter dated 27.05.2016 is annexed as Annexure-C/1. The complainant stated that subsequent to the allotment of the said Apartment, the complainant paid a sum of ₹1,99,628/- towards the booking amount through cheque no. 000097 dated 17.06.2016, which was duly realised by the respondent.

6. On 07.11.2016, the respondent issued a letter for execution of Apartment Buyer's Agreement for Apartment No. C-1201, Tower-C in the said project. The copy of the letter dated 07.11.2016 is annexed as Annexure-C-2. Subsequently, on 03.04.2017, the respondent changed the allotment of the Apartment from Apartment no. C-1201 Tower C to B-1212 Tower B, Type 2BHK and issued a fresh allotment letter dated 03.04.2017.

7. On 03.04.2017, an Apartment Buyer's Agreement was executed between the parties. The complainant continued to make payments of the due instalments as and when demanded by the respondent, in accordance with the payment plan stipulated in the Apartment Buyer's Agreement. The complainant

has stated in the complaint that he has paid a total amount of ₹23,97,2132/- against Total Sale Consideration of ₹25,80,800/-.

8. The Total Sale Consideration of the Apartment was ₹25,80,800/- inclusive of all charges, including the basic sale price, club membership, IFMS, power backup, EDC and IDC, etc. A copy of the Allotment letter and Apartment Buyer's Agreement dated 03.04.2017, along with the payment plan/schedule is annexed as Annexure-C/3 and copies of demand letters and receipts of payment are annexed as Annexure-C/4.

9. The complainant stated that as per Clause 9 of the Apartment Buyer's Agreement, the respondent was under an obligation to deliver possession of the allotted Apartment within a period of 36 months from the date of receipt of the first instalment, i.e. 24.06.2016. After considering the additional grace period of six months stipulated in the agreement, the respondent was required to deliver possession of the Apartment on or before 24.12.2019. However, the respondent failed to deliver possession till date. The complainant alleged that no substantial construction activity was being carried out at the project site, thereby demonstrating the failure of the respondent to complete the project and hand over possession of the allotted Apartment to the complainant.

C. RELIEF SOUGHT BY THE COMPLAINANT:

10. The complainant in her complaint has sought the following reliefs:-

i) To initiate a Suo-moto complaint, investigate and prosecute the respondent for changing the building plan and layout without following the proper procedure under RE(RD) Act, 2016 and rules framed thereunder. A severe penalty be imposed on the respondent for contravening the provisions of the RE(RD) Act, 2016 and rules framed thereunder.

ii) To pass appropriate orders and directions to the respondent to complete the Asha Panchkula residential project and deliver the actual, vacant and peaceful physical possession of the allotted Apartment to the complainant.

iii) To pass an order directing the respondent to pay interest at the prescribed rate on the amount deposited by the complainant to the respondent for the delay in delivery of possession of the allotted Apartment as this Hon'ble Authority may deem fit and proper.

iv) To pass an order directing the respondent to pay a sum of ₹5,00,000/- as compensation to the complainant for the harassment, pain and mental agony.

v) To pass an order directing the respondent to pay a sum of ₹1,50,000/- as compensation for the damages caused and incurred by the complainant including legal costs and expenses incurred in filing the present complaint against the respondent.

vi) To pass such other and further orders as this Hon'ble Authority may deem fit and proper.

D. REPLY FILED BY THE RESPONDENT:

11. Upon receipt of notice, the respondent filed a reply on 11.09.2025, wherein the respondent stated that the present complaint is non-maintainable and liable to be dismissed.

12. The respondent has stated that the complainant wrongly seeks to proceed on the basis that time was the essence of the contract. The complaint ignores the provisions of Clause 9 of the Apartment Buyer's Agreement, which has to be read in its totality to gauge the intention of the parties, which clearly is not to treat delivery of possession clause as being the essence of the contract.

13. The respondent has relied on various cases of the Hon'ble Supreme Court. In the cases of *Chand Rani Vs. Kamal Rani 1993-1-SCC-519 (Para 25)*, *Gomathinayagam Pillai Vs. Palaniswami Nadar 1967-1-SCR-227* and *Govind Prasad Chaturvedi v. Hari Dutt Shastri 1977-2-SCC-539 (Para 5)*, it was held that the fixation of the period within which a contract has to be performed does not make the stipulation as to time the essence of the contract. When a

contract relates to a sale of immovable property, it will normally be presumed that time is not the essence of the contract.

14. The respondent denies that he was to hand over the possession of the allotted unit by 24.12.2019 as the estimated time for handing over of possession of the Apartment, as per Clause 9 of the Apartment Buyer's Agreement, was subject to other terms and conditions of the said Agreement. Clause 9 is reproduced as follows:

> *"The company based on the present plans and estimates contemplates to offer possession of the said apartment to the apartment allottee within a period of 36 months from the receipt of the first instalment against allotment of the said apartment plus a grace period of 6 months, unless there shall be delay or failure due to Force Majeure conditions and due to failure of apartment allottee(s) to pay in time the total sale price and other charges and dues/payments mentioned in the agreement or any failure on the part of the Apartment allottee(s) to abide by the terms and conditions of this agreement"*

A copy of the Apartment Buyer's Agreement dated 03.04.2017 is annexed as Annexure-R-1.

15. The respondent stated that the present complaint is liable to be dismissed as the delay in offering possession of the said unit was due to force majeure events and not due to the willful negligence of the respondent. The respondent listed the following three force majeure events, which took place during the period of development of the said project:

i. Due to the non-supply of raw material and illegal forfeiture of the respondent's money by M/s Fortune Metals Ltd., (i.e. the supplier) the

development of the said project was hampered. On 14.01.2020, an arbitral award, copy of which is annexed as Annexure-R-2, was passed in favour of the respondent and the supplier was directed to return the amount to the respondent alongwith interest at the rate of 12%.

ii. Due to the non-completion of construction work by the main contractor of the project i.e. 'M/s Bucon Infratech Pvt. Ltd.', the project got delayed and this delay was beyond the control of the respondent company. Copy of consent decree between the contractor and the respondent is annexed as Annexure-R-3.

iii. In March 2020, due to COVID-19 pandemic, all the construction activities across the country came to a halt. Due to unforeseen circumstances which were totally beyond their control, they are not liable for prayers as sought by the complainant. A copy of Advisory and Notification are annexed as Annexure-R-4.

16. The respondent has referred to a case titled as *Ramesh Malhotra & Ors. v. Emaar MGF Land Ltd. and Anr. 2019*, wherein the National Consumer Disputes Redressal Commission has held that some delay in large housing projects is inevitable and cannot be termed as unreasonable. The respondent further stated that it is not in a position to give immediate possession of the said Apartment to the complainant or pay a per-month interest till delivery of

possession, as it would stall the whole project and would hamper the interests of the rest of the allottees.

17. The respondent stated that this complaint is not admissible before the Hon'ble Authority as Clause 30 of the Apartment Buyer's Agreement clearly provides a binding Arbitration Clause. The Authority does not have jurisdiction to entertain the purported consumer complaint, as the said agreement specifically states that all disputes shall be referred to an arbitrator to be appointed as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended).

18. The respondent stated that the construction work of the project is presently at full swing and the respondent is ready to deliver the possession of the units to its allottees as soon as the development work is completed; therefore, no indulgence of this Hon'ble Authority is required in the present case.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND THE RESPONDENT:

19. Learned counsel for the complainant reiterated the facts of the case as stated in the complaint. Ld. counsel for the respondent rebutted to the claims of the complainant and argued that the project is still incomplete and the respondent is not in a position to complete it and deliver the possession immediately.

F. ISSUE FOR ADJUDICATION:

20. Whether the complainant is entitled to relief of possession along with delay interest for delay in handling over the possession in terms of Section 18 of RE(RD) Act, 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY:

21. The Authority has gone through the rival contentions. In the light of the background of the matter as captured in this order and also the arguments submitted by both the parties, the Authority observes as follows.

i. The Authority observes that the complainant initially booked a residential Apartment bearing No. C-1201, Tower-C, Type 2BHK (Corner or Park Facing Unit), measuring 1110 sq. ft. (approximately 103.12 sq. metres), in the respondent's project namely, Asha Panchkula, situated at Kot Village, Sector-14, Panchkula Extension-II, District Panchkula, Haryana. The complainant submitted an application dated 04.03.2016 and paid ₹5,000/- towards application money. Thereafter, the respondent issued an allotment letter dated 27.05.2016 in respect of Apartment No. C-1201, Tower-C. Subsequently, the allotment was changed by the respondent on 03.04.2017 from Apartment No. C-1201, Tower-C to Apartment No. B-1212, Tower-B, Type 2BHK, and a fresh allotment letter was issued. The Apartment Buyer's

Agreement was executed between the parties on 03.04.2017. The total sale consideration of the Apartment was ₹25,80,800/-, inclusive of all charges.

ii. The Authority observes that as per Clause 9 of the Apartment Buyer's Agreement, the respondent contemplated offering possession of the allotted Apartment within a period of 36 months from the date of receipt of the first instalment, along with a grace period of six months. The first instalment was received on 24.06.2016. Accordingly, the respondent was contractually obligated to offer possession of the Apartment on or before 24.12.2019. However, the respondent has admittedly failed to offer possession within the stipulated period.

iii. The Authority observes that the respondent has not disputed the basic allotment particulars and the total sale consideration of the Apartment. The complainant has specifically asserted that she had paid ₹23,97,213/- against the total sale consideration of ₹25,80,800/-. However, upon examination of the documents placed on record, it is found that an amount of ₹1,63,846/- is neither supported by any payment receipt placed on record by the complainant nor reflected in the demand letters issued by the respondent.

iv. With regard to the objection raised by the respondent that time was not the essence of the contract in transactions involving immovable property, the Authority observes that the judgments relied upon by the respondent cannot be read in isolation or applied mechanically to proceedings under the RE(RD) Act, 2016. The present proceedings are governed by the specific statutory obligations imposed upon a promoter under the Act. Section 18(1) of the Act specifically provides for the consequences where the promoter fails to complete or is unable to give possession of an Apartment in accordance with the terms of the agreement for sale and the date specified therein. Therefore, the respondent cannot escape its statutory obligations merely by contending that time was not the essence of the contract.

v. The Authority has also considered the plea of force majeure raised by the respondent. The respondent has relied upon three circumstances, namely, non-supply of raw material by M/s Fortune Metals Ltd., non-completion of construction work by its main contractor, M/s Bucon Infratech Pvt. Ltd., and the outbreak of the COVID-19 pandemic in March 2020.

In this regard, the Authority observes that the mere assertion of circumstances beyond the control of the promoter does not automatically absolve the promoter of its statutory and contractual

obligations. The respondent is required to establish that the circumstances relied upon were beyond its reasonable control, that they directly affected the development of the project and that the period of delay claimed is attributable to such circumstances. A commercial dispute between the promoter and its supplier/contractor, by itself, cannot be treated as a ground for indefinitely extending the committed date of possession. The promoter remains responsible for ensuring timely execution and completion of the project and cannot ordinarily shift its responsibility towards the allottees on account of disputes or defaults involving its contractors or suppliers.

With regard to the COVID-19 pandemic, the Authority acknowledges that the pandemic was an extraordinary and unforeseen event which adversely affected construction activities across the country. However, the respondent has failed to demonstrate, on the basis of cogent material, the precise period for which construction activities in the project remained suspended or the extent to which the pandemic affected the completion of the allotted Apartment. Further, the due date of possession, even after accounting for the contractual grace period, was 24.12.2019, whereas the nationwide lockdown commenced in March 2020. Consequently, the respondent cannot rely upon the subsequent

outbreak of the pandemic to justify the delay which had already accrued before the commencement of the lockdown. Accordingly, the plea of force majeure cannot be accepted as a blanket defence to the entire period of delay.

vi. The Authority is of the considered view that the proposition that some delay may occur in large housing projects cannot be treated as an unconditional defence against the statutory obligations of a promoter. Each case has to be examined on its own facts, contractual stipulations and the material placed on record. In the present case, the respondent has failed to establish any sufficient justification for the substantial delay beyond the contractual possession date.

vii. With regard to existence of an arbitration clause under Clause 30 of the Apartment Buyer's Agreement, the Authority observes that Section 79 of the RE(RD) Act, 2016 bars the jurisdiction of civil courts in respect of matters which the Authority or the adjudicating officer is empowered to determine under the Act. Further, Section 88 provides that the provisions of the Act are in addition to, and not in derogation of, other laws for the time being in force. The statutory remedies available to an allottee under the Act cannot be defeated merely by incorporating an arbitration clause in the Apartment Buyer's Agreement. The

arbitration clause is, therefore, not a bar to the jurisdiction of this Authority to adjudicate the present complaint in accordance with the provisions of the Act.

viii. The Authority further observes that the respondent has stated that construction work of the project is in full swing and that it is ready to deliver possession of the allotted units upon completion of the development work. However, such a statement, in the absence of cogent supporting material establishing the actual stage of construction, the availability of requisite statutory approvals and the anticipated date of completion, cannot be considered sufficient to discharge the respondent's obligations under the Act. The respondent is under a statutory obligation to complete the project in accordance with the sanctioned plans and obtain the requisite occupation certificate or completion certificate, as applicable, before offering possession to the allottees.

22. Therefore, the Authority observes that the respondent has failed to fulfil its obligation stipulated in the Apartment Buyer's Agreement dated 03.04.2017. The possession of the Apartment should have been delivered by 24.12.2019. However, even after the lapse of several years, the respondent is not in a position to offer possession of the Apartment since the respondent company has yet to receive the occupation certificate in respect of the project in question. The fact remains that the respondent, in its written statement, has not

specified as to when the possession of the booked Apartment will be offered to the complainant. The complainant, however, does not wish to withdraw from the project and is rather interested in getting possession of her booked Apartment. In these circumstances, the provisions of Section 18 of the RE(RD) Act, 2016 clearly come into play, by virtue of which, while exercising the option of taking possession of the Apartment, the allottee/complainant is entitled to interest for the entire period of delay caused at the rate prescribed.

23. The Authority concludes that the complainant is entitled to delay interest from the deemed date of possession i.e. 24.12.2019 up to the date on which a valid offer is sent to the complainant after receipt of the occupation certificate, along with monthly interest. As per Section 18 of the RE(RD) Act, 2016, interest shall be awarded at such rate as may be prescribed. The definition of 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:

24. Rule 15 of HRERA Rules, 2017, provides for prescribed rate of interest which is as under:

> *"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 (MCLR) 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".*

25. 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. 13.11.2026 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 10.95%.

26. The Authority has got calculated the interest on total paid amount of ₹22,33,367/- from due date of possession i.e. 24.12.2019 till the date of this order i.e. 13.11.2026 which works out to ₹16,86,415/- and further monthly interest of ₹20,100/- as per detail given in the table below:

Sr.No.	Total Principal Amount (in ₹)	Deemed date of possession or date of payment, whichever is later	Interest Accrued till 13.11.2026 (in ₹)
1.	22,33,367/-	24.12.2019	₹16,86,415/-

Monthly interest	**20,100/-**

27. It is pertinent to mention here that since an amount of ₹1,63,846/- is neither supported by any payment receipt placed on record by the complainant nor reflected in the demand letters issued by the respondent, it cannot be taken into consideration for the purpose of determining the complainant's entitlement to interest for delayed possession under Section 18(1) of the RE(RD) Act, 2016. Consequently, after deducting the aforesaid amount of ₹1,63,846/- from the total amount of ₹23,97,213/- claimed to have been deposited by the complainant, the balance amount of ₹22,33,367/- is taken to be the established amount deposited by the complainant for the purpose of calculating interest for delayed possession. The complainant shall remain at liberty to seek appropriate legal remedy in respect of the remaining amount of ₹1,63,846/- by placing on record relevant documentary proof, including by way of filing a fresh complaint, in accordance with law.

28. The complainant has also sought compensation on account of harassment, mental agony, undue hardship, litigation costs and on other grounds. In this regard, it is observed that the Hon'ble Supreme Court of India in ***Civil Appeal Nos. 6745-6749 of 2027, 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.

29. The other relief mentioned at Para 10(i) was not pressed upon by the complainant in the complaint or during the course of arguments, therefore, no observations are being made in that regard.

H. DIRECTIONS OF THE AUTHORITY:

30. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RE(RD) Act, 2016 to ensure compliance of obligation cast upon the promoter/respondent as per the function entrusted to the Authority under Section 34(f) of the RE(RD) Act, 2016:

(i) Respondent is directed to pay upfront delay interest of ₹16,86,415/- (till date of order i.e. 13.11.2026) to the complainant towards delay already caused in handing over the possession and further monthly interest ₹20,100/- till the date of valid offer of possession after receipt of occupation certificate.

(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) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of valid offer of possession.

(iv) The rate of interest chargeable from the allottee by the respondent/promoter, in case of default shall be charged at the prescribed rate i.e. 10.95% by the respondent/promoter which is the same rate of interest which the respondent/promoter shall be liable to pay to the allottee/complainant.

(v) The respondent shall not charge anything from the complainant which is not part of the Apartment Buyer's Agreement.

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

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(CHANDER SHEKHAR)
MEMBER

13.11.2026
Monika
(Law Associate)