

**BEFORE Sh. Arunvir Vashista, Member-II  
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT  
CHANDIGARH**

Complaint No. RERA/ GC No.0328 of 2021

Date of filing: 20.08.2021

Dated of Decision: **08.08.2025**

Rajan Jain,  
# 785, Phase-3B1 Mohali  
SAS Nagar (Mohali), Punjab-160059

...Complainant

Versus

M/s Country Colonizers Pvt. Ltd,  
P.O. Rayon and Silk Mills  
Adjoining Coco Cola Depot, G.T. Road,  
Chhehatra, Amritsar (Punjab)

... Respondent

Complaint under Section 31 of the Real Estate  
(Regulation and Development) Act 2016.

Present: Ms. Prabhjot Kaur, Advocate representative for the  
complainant  
Sh. Vageesh Marwaha, Advocate, representative  
for the respondent


**ORDER**

The present complaint has been filed by Sh. Rajan Jain (hereinafter referred as the 'Complainant') u/s. 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as the 'RERD Act, 2016') read with Rule 36 of the Punjab State Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred as the 'Rules') before the Real Estate Regulatory Authority, Punjab (hereinafter referred as 'Authority') relating to the project 'Wave Garden, Group Housing-2 (Phase-1)' situated at Sector 85, Distt. SAS Nagar (Mohali) against the respondent-promoter M/s. Country Colonizers Pvt. Ltd.

2. The gist of the complaint, as alleged by the complainant, is that: -

i. The complainant entered into an agreement dated 05.09.2012 with the respondent, M/s Country Colonisers Private Limited, for the allotment of an apartment bearing no. 1001, located in Tower Hibiscus, 10<sup>th</sup> Floor, Type-3 BHK+ in the Group Housing development project named "Wave Gardens," situated at S.A.S Nagar, Sector 85 & 99, District Mohali, Punjab. The built-up area of the allotted unit is approximately 4320 square feet (401.34 square meters). The complainant, in accordance with the terms of the agreement, made a payment of ₹1,42,68,478/- for the said apartment. However, despite the commitment made by the respondent, possession of the unit has not been delivered to the complainant, which is in contravention of the terms specified in the arrangement.

ii. The complainant was assured of timely possession of the flat at the time of filling out the application form for allotment. The provisional allotment of the unit was made on 05.06.2012, and the booking was done under the proposed "Construction Link Payment Plan." Along with the application form, the complainant made an initial payment of ₹7,00,000/- (Rupees seven lakhs only) by cheque at the respondent's office as the booking amount. Following the booking, on 05.06.2012, the respondent issued a provisional allotment letter to the complainant and on 05.09.2012, the complainant and the respondent entered into a formal apartment allottee agreement that laid down the terms and conditions related to the development of the project, payment schedule, and delivery of possession of the apartment.




iii. As per Clause 5.1 of the arrangement, the expected date of handing over possession of the unit was fixed at 30 months from the date of execution of the agreement, with an additional extended period of 6 months. Accordingly, the deadline for delivery of possession was set as 05.09.2015. The arrangement further suggests that the complainant had purchased an apartment with a super area of 4350 square feet (401.34 square meters) and a built-up area of 3432.3 square feet (318.87 square meters) for a basic price of ₹1,89,86,760/-, exclusive of external development charges (EDC), internal development charges (IDC), service tax, and other additional charges. However, the respondent failed to offer timely possession of the unit as per the stipulated terms in the arrangement.

iv. The complainant has made total payments amounting to ₹1,42,68,478/- and despite multiple assurances and commitments made by the respondent, possession of the apartment has not been handed over. Repeatedly, the complainant followed up with the respondent regarding the

delay, but the respondent failed to adhere to the promises made regarding possession.

v. On 03.05.2019, the complainant formally requested the respondent via email to refund the interest on the amount paid at a rate of 10.70% per annum, which is calculated as per Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. The requested interest amount stood at ₹84,11,018/-, considering the delay in possession.

vi. The complainant does not wish to withdraw from the project but seeks the payment of interest on the amount already paid, as per Rule 16 of the Punjab State Real Estate (Regulation and Development) Rules, 2017, due to the respondent's failure to deliver possession. Additionally, Clause 4.2 of the agreement stipulates that in case of a default in payment by the complainant, the respondent would have charged an interest rate of 18% per annum on a compounding basis. Therefore, the complainant is entitled to the same rate of interest on the delayed possession as per the agreement, as the respondent is in breach of its obligations.



vii. Given the current status of the project, there appears to be no reasonable scope for the unit's possession to be handed over in the near future. At the time of booking, the respondent had assured the complainant that all necessary formalities had been completed and that development would commence immediately. However, despite several attempts by the complainant to engage with the respondent and seek rightful payment of the interest amount due, the requests have consistently gone unacknowledged.

3. In response to the notice, the respondent has submitted its reply, asserting its position based on the following averments: -

i. It is also denied that the possession of the unit has not been delivered or that any clauses of the agreement have been violated by the respondent. The fact remains that possession has already been offered by the respondent, but it is the complainant who failed to take possession of the unit.

ii. The assertion that the respondent has breached its contractual obligations in any manner is also strongly denied. Additionally, the claim that the unit in question was supposed to be delivered within 30 months with an extension of 6 months is denied. It is reiterated that the complainant has falsely stated the amount paid, and the respondent has never made any fake assurances. The allegations that the respondent has failed to address

the concerns of the complainant in a reasonable manner are baseless and without merit. The fact that possession of the unit has already been offered negates the complainant's claim that possession was not intended to be given. The entire basis of the complainant's relief sought in this case is the non-offering of possession, whereas the reality is that the complainant has deliberately chosen not to accept possession despite it being duly offered.

iii. That possession of the unit was offered approximately two years ago, and the complainant neither accepted possession nor raised any grievances until the present complaint was filed. This clearly indicates that the complainant has mala fide intentions. Furthermore, the calculations submitted by the complainant are wholly incorrect, as the interest calculated is based on the highest SBI MCLR rate over the past ten years. However, as per the applicable rule, the interest should be determined based on the SBI MCLR rate effective on the date of passing the order by the RERA Authority, not the highest rate in the last decade. Therefore, the claim that the respondent is liable to pay any interest in this regard is vehemently denied. The respondent has neither provided any false assurances nor violated any agreement or contract. The allegations that additional assurances apart from the written contract were made are also false. It is also denied that there was no scope for handing over possession of the unit, as possession has already been duly offered. The assertion that the respondent is liable to pay compensation to the complainant for any loss due to alleged false statements in the prospectus under Section 12 of the RERA Act is completely incorrect. The respondent has not made any false statement in any prospectus and has not violated Section 12 of the RERA Act in any manner. The contents of the foregoing paragraphs, especially paragraphs A, B, and C of the grounds of contest, may kindly be read as part of this paragraph for the sake of brevity and to avoid unnecessary repetition.

iv. There exists no cause of action infavour of the complainant against the respondent builder with respect to the reliefs claimed. Additionally, the interest amount calculated by the complainant is highly inflated and grossly incorrect, and thus, it is liable to be rejected outright. The complainant has further sought litigation expenses, which are in the nature of compensation, and it is submitted that the Hon'ble Authority does not have jurisdiction to award such costs. Additionally, the complainant has sought delayed interest until the actual delivery of possession, which is legally untenable. Even if, for the sake of argument, interest was deemed payable, it would be applicable only up to the date when possession was offered and not beyond that.

v. The actual date of the Agreement is 05/09/2012. The complainant's claim that the possession date as per the agreement was 17/11/2015 is incorrect, as the agreement does not specify any such date. There is no valid cause of action against the respondent builder for any relief sought in the complaint.

vi. As per the present Agreement, there was no mandatory obligation on the part of the respondent to deliver possession within any fixed timeframe. Clause 5.1 of the Allottee Arrangement states that the developer shall endeavour to complete the development of the project as far as possible within 36 months. It is clear from this provision that there is no fixed, mandatory date of completion for the project, as alleged by the complainant. Additionally, Clause 5.5 of the Allottee Arrangement explicitly provides for monetary entitlements to the complainant in case of delays beyond this period. It states that the respondent shall be liable to pay Rs. 5/- per square foot per month for any delay. Furthermore, even if Clause 5.1 were considered mandatory, it would still be subject to the complainant's timely payment of dues, which he has failed to make. Since the complainant has been grossly negligent in making timely payments, the alleged timeframe for construction completion is inapplicable to the respondent.

vii. The complainant's assertion that the construction and development of the apartment are incomplete is incorrect and baseless. The construction of the project, including the unit in question, has been completed, and an Occupancy Certificate was issued on 16.10.2019 by the Competent Authority. Additionally, possession of the unit has been formally offered to the complainant through an Offer of Possession Letter dated 29.05.2020. These facts conclusively prove that the complainant's claims regarding non-completion and non-issuance of the occupancy certificate are false. The respondent has obtained all necessary approvals and sanctions, which is evident from Section 14(2) of the Punjab Apartment and Property Regulation Act, under which an Occupancy Certificate can only be issued after due compliance with all building regulations. Thus, the issuance of the Occupancy Certificate confirms that the respondent has complied with all legal and regulatory requirements.

viii. Even if, for the sake of argument, any delay in construction was assumed, only the delay penalty stipulated in the Buyer's Agreement is payable, and no interest under the RERA Act can be imposed. Clause 5.5 of the Buyer's Agreement explicitly states that in case of any delay, the allottee is entitled to Rs. 5/- per square foot per month. This position has been upheld by the Hon'ble Supreme Court in Ireo Grace Realtech Pvt. Ltd.

v. Abhishek Khanna & Others (Civil Appeal No. 5785 of 2019), where it was held that if an Occupancy Certificate has been obtained, the builder is only liable to pay the delay penalty under the Buyer's Agreement. In view of the Supreme Court's ruling, since the Occupancy Certificate has already been obtained, the respondent is only liable to pay the delay penalty as per the agreement. Additionally, if any delay interest is granted to the complainant, the respondent is entitled to adjustment of interest for the complainant's delayed payments.

Therefore, the Respondent respectfully **prays for the outright dismissal of the complaint**, as it lacks legal merit.

4. The violations and contraventions contained in the complaint were given to the representative of the respondents to which they denied and did not plead guilty. The complaint was proceeded for further inquiry.

5. Complainant filed his rejoinder controverting the allegations of the written reply filed by respondents and reiterating the averments of the complaint. However, it is also mentioned in the rejoinder that the complainant asserts that the provisions of the RERA Act override any one-sided terms set by the builder in their agreements, ensuring that penalties and compensation are governed by statute rather than arbitrary clauses. The offer of possession made by the respondent is a mere attempt to evade liability under RERA and lacks legal standing, as the construction is incomplete and far from the promised facilities. Despite initiating lengthy proceedings, the respondent has failed to provide any evidence of the site or the complainant's apartment. The complainant denies any default in payment, having already paid more than the base selling price in a construction-linked schedule, making the alleged arrears baseless. The project remains in a dilapidated state, and the respondent cannot rely on contractual clauses to pay a meager compensation while imposing hefty interest on the complainant for any alleged default. The obligation to deliver possession within 36 months has not been met, and the respondent's ledger statements are inaccurate. The completion or occupancy certificate does not absolve the respondent, as it pertains only to the basic structure and not the promised amenities, which remain unfulfilled. The delayed possession offer is a deceptive tactic to escape liability. Litigation costs

incurred by the complainant are genuine expenses, not compensation, and the respondent's cited judgments are irrelevant since those cases involved timely occupancy certificates and actually completed projects. The respondent has wrongfully held and utilized the complainant's funds under false inducements and must be penalized under the provisions of RERA.

6. That representatives for parties addressed arguments on the basis of their submissions made in their respective pleadings as summarised above. I have duly considered the documents filed and submissions of the parties i.e., complainant and respondent.

7. During the arguments, learned counsel for the complainant argued that the complainant, having waited for several years beyond the promised possession date, confronted the promoter with deep frustration. He stated that he had entered into the agreement with full trust in the project's timely completion and had paid a significant amount of ₹1,42,68,478/-. Yet, despite repeated assurances, possession was still undelivered. He insisted that the agreement had clearly stipulated a 30-month timeline, with an additional six-month extension, and as per this calculation, the possession should have been given by November 2015. However, not only had the respondent failed to deliver the apartment within the stipulated timeframe, but even after multiple follow-ups, there had been no concrete action taken.

8. On the other hand, learned counsel for the respondent-promoter argued that the project in question is duly registered with RERA vide registration certificate dated 23.09.2019 bearing registration number PBRERA-SAS81-PR0154. He further argued that possession had been offered long ago, and it was the complainant who had failed to take possession. The complainant strongly refuted this statement, pointing out that merely offering possession on paper did not equate to the actual delivery of a habitable unit. He argued that the construction was incomplete, the promised amenities were not provided, and the unit was not in a liveable condition. He questioned how possession could be deemed to be

"offered" when the very facilities that were advertised at the time of booking remained unfulfilled.

9. The promoter then cited the issuance of the Occupancy Certificate on 16.10.2019 and argued that since the project had received all necessary approvals, the complainant's allegations of non-completion were baseless. He insisted that the project was complete and that the complainant was merely finding excuses to delay taking possession. The complainant countered this argument, stating that an Occupancy Certificate merely indicated that the structure met basic legal requirements but did not mean that the promised development had been completed. He pointed out that at the time of booking, the respondent had made grand assurances regarding world-class amenities, green spaces, security systems, and premium finishing, none of which had been delivered. He accused the promoter of misleading buyers by obtaining approvals on an incomplete project just to escape liability.

10. The complainant further stated that the promoter had been completely unresponsive for nearly eight months after the complainant had officially requested the refund of the interest amount. He questioned why, if possession was truly offered, the promoter had not proactively ensured that the unit was made ready for handover. He further argued that the promoter was quick to charge high interest rates in case of any delay in payments by the complainant but was unwilling to apply the same principle when the delay was on the builder's part. He emphasized that Clause 4.2 of the agreement allowed the promoter to charge 18% per annum compounded interest on delayed payments, and by that logic, the complainant was entitled to the same rate for the delay in possession.

11. In view of the arguments advanced by both complainant's & respondent's counsel and the documents placed on record by both parties, this Bench has examined the matter comprehensively in light of the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Punjab State Real Estate (Regulation and Development) Rules, 2017.



12. It is observed that the project in question, i.e., Wave Gardens, forms a part of a larger group housing scheme duly registered with this Authority under registration number PBRERA-SAS81-PR0154, dated 23.09.2019. The promoter has submitted that the project has been completed and an Occupancy Certificate was duly obtained on 16.10.2019 from the Competent Authority. The possession of the unit in question was accordingly offered to the complainant. This bench finds that the issuance of the Occupancy Certificate is a conclusive legal proof that the project has met the minimum standards of habitability as per applicable building norms and laws. As such, the act of offering possession after issuance of the Occupancy Certificate cannot be disregarded as a mere formality.

13. The complainant, however, contends that the possession offered was not in conformity with the promised standards and that essential amenities were incomplete. While the concerns raised regarding the quality of amenities and development may be genuine to some extent, the complainant has failed to substantiate these allegations with sufficient material evidence such as photographs, inspection reports, or third-party verification to establish that the unit was uninhabitable or that the basic services necessary for occupation were absent at the time of offer of possession.

14. Further, it is noted that the complainant continued to remain silent and did not take possession of the unit despite the alleged offer being made after completion. The delay in raising the demand for compensation or interest under the Act, without availing the offered possession, reflects a lack of diligence on the complainant's part. The complainant has also admitted to not withdrawing from the project and instead seeks only interest for delayed possession, although he did not conclusively establish that the delay persisted even after the issuance of the Occupancy Certificate.

15. It is also brought on record that there exist alleged outstanding dues on the part of the complainant, and the promoter has clarified that the project followed a construction-linked payment plan. In the absence of timely payments by the allottee, delays in possession attributable to such defaults cannot be imposed

entirely upon the promoter. The complainant has also relied on Rule 16 of the Punjab RERA Rules, 2017 to seek interest. However, this Rule applies primarily in cases where the delay is unjustifiable, and the promoter is in clear default of obligations. Given the issuance of the Occupancy Certificate, the offer of possession, and the existence of pending dues, it cannot be conclusively held that the promoter was in breach of delivery obligations after giving offer of possession vide letter dated 29.05.2020. The date of possession as per Buyer Agreement was 05.09.2015 (after including 6 months of grace period) and possession is offered on 29.05.2020. Therefore, it is held that the promoter is liable to pay interest under Section 18 of the RERA Act, 2016 read with Rule 16 of the RERA (R&D) Rules, 2017 from 01.10.2015 to 31.05.2020. The interest is calculated for whole month and not on day-to-day basis.

16. Considering the facts and circumstances of the case, the applicable legal provisions, and the principles laid down by higher judicial authorities, this Bench is of the view that the complainant has established a case for claiming interest under the Act till the date of offer of possession as the promoter has fulfilled its obligation by obtaining the necessary approvals and offering possession after obtaining Occupation Certificate on 29.05.2020 when offer of possession was given. As the property has been lying vacant due to litigation right from the day of offer, it is a financial loss to both the allottee and promoter since 01.11.2020. The promoter is directed to hand over immediately the vacant, peaceful and complete possession to the allottee. Looking into the facts and circumstances of the case and litigation, the promoter will not charge any maintenance charges on the flat since possession was still to be delivered. And, it is held that promoter is entitled to the interest @ 11.10 % p.a. on the balance amount as per "Agreement for Sale" from the allottee from 01.06.2020 to 08.08.2025. The promoter will be entitled to further interest in net payable after deducting the amount of interest payable by it to the allottee from the total of balance amount due on possession and interest on the said amount @ 11.10% from 01.06.2020 to 08.08.2025.

17. As such the complainant is directed to take possession immediately by paying the balance amount payable by him after deducting the interest payable and to receive the balance amount if any. In case of excess, it will be refunded by

the promoter. The interest payable is to be calculated @ 10.90% per annum from 01.10.2015 to 31.05.2020 i.e. 56 months and on an amount of Rs.1,42,68,478/-.

The promoter is also directed to make this calculation within 30 days from the receipt of this order and the complainant/allottee will also submit its calculation to the promoter within 30 days of the receipt of this order. The balance amount payable, if any, will be paid by the allottee before taking possession. In case the amount is due towards promoter, it will hand over the possession immediately and will pay the balance amount within 90 days from the receipt of this order. However, the promoter is not allowed to charge any penalty amount or any other charges from allottee/complaint in any form on balance amount except the due/balance amount payable and interest on the payable amount due from allottee as per amounts mentioned in the "Agreement for Sale". In case of non-compliance of above by the parties, the Secretary of this Authority is directed to initiate recovery proceedings against the respondent/ promoter accordingly after the expiry of 90 days period as per Rule 17 of the Punjab Real Estate (Regulation & Development) Rules, 2016.

18. The complaint is accordingly **partly allowed**. File be consigned to record room after due compliance.

**Chandigarh:**  
**Dated: 08.08.2025**



**(Arunvir Vashista),  
Member, RERA, Punjab**