

**BEFORE SHRI BINOD KUMAR SINGH, MEMBER  
REAL ESTATE REGULATORY AUTHORITY, PUNJAB**

Complaint No.0248 of 2023  
Date of Institution : 09.07.2023  
Date of Decision: 09.07.2025

Sahil Garg, resident of House No.2, Gali No.1, Thales Bagh Colony, Sangrur,  
Patiala, Punjab, Pin ode 148001

....Complainant

Versus

Hero Realty Private Limited, Office E-2, Qutab Hotel Complex, Shaheed Jeet  
Singh Marg, New Delhi, Pin Code 110016

....Respondent

Complaint in Form 'M' u/S 31 of the Real Estate (Regulation  
and Development) Act, 2016, read with Rule 36 (1) of the  
Punjab State Real Estate (Regulation and Development)  
Rules, 2017.

**(Registration Number: PBRERA-SAS81-PR0828)**

Present: Shri J.P.Singla, Advocate for complainant  
Shri Sanjeev Sharma, Advocate with Shri Vishal Singal, Advocate  
for respondent

**ORDER**

In this complaint, complainant seek interest for the delayed period of 1141 days in providing the possession at the prescribed MCLR rate plus two percent. The only dispute between the parties is with regard to calculation of the days of delay as admittedly complainant has received possession of the apartment on 22.12.2022 instead of 31.01.2021 being 42 months as mentioned in para 4 of Apartment Buyer Agreement dated 31.07.2017.

2. The brief facts of the complaint are summarized below that :-

2.1 Complainant booked Apartment no.506, Tower T-7, 5<sup>TH</sup> Floor having super area of 1565 sq. feet for a total consideration of Rs.64,84,450/- by paying Rs.32,00,000/- even before the

execution of Builder Buyer Agreement/Apartment Buyer Agreement dated 31.07.2017 (Annexure C-1).

- 2.2 As per Clause 4.1 of Apartment Buyer Agreement dated 31.07.2017, possession of above said Apartment was to be offered within 42 months for Towers upto 20 stories, from the date of its signing or startup construction, whichever is earlier. As per email (undated) (Annexure C-2) received from respondent the work of Tower T-7, was started in second quarter of 2016.
- 2.3 Possession of the apartment was given to complainant on 22.12.2022, with delay of 1141 days.
- 2.4 Vide communication dated 02.05.2023 (Annexure C-3) it was intimated by Counsel for complainant to respondent to read the delay of 1141 days instead of 686 days as mentioned in legal notice dated 17.04.2023.
- 2.5 However, respondent has given benefit of only 114 days and adjustment of amount was shown @ rate of 9% interest which is contrary to the provisions of the Act of 2016.
- 2.6 Complainant sent a registered legal notice on 17.04.2023 (Annexure C-5) to respondent through his advocate, but was not responded to.
- 2.7 It is the prayer of complainant to direct respondent to pay interest on the actual delay of 1141 days instead of 114 days.

3. Upon Notice, Shri Vishal Singal, Advocate appeared for respondent and submitted reply 05.11.2023 which is summarized below:-

- 3.1 While admitting allotment of apartment vide allotment letter dated 15.04.2017; entering into Apartment Buyer Agreement on 31.07.2017; and issuance of letter dated 12.09.2022 for possession, it is contended that complainant was in violation of



Section 19(6) of the Act of 2016 whereby complainant was to pay necessary payments as specified in agreement. However, complainant was a regular defaulter in making payment of installments. There is a delay of 34 days in payment of installment, thus the date of possession automatically extended by 34 days.

3.2 Respondent also submitted that due to Covid-19 *Force Majeure* position arisen the real estate business has been adversely affected. In support of this contention, respondent annexed Circular dated 19.02.2020 issued by Ministry of Finance declaring Covid-19 as *Force Majeure*; Circular dated 13.05.2020 issued by Ministry of Housing and Urban Affairs; Circular dated 18.05.2020 issued by Maharashtra Real Estate Regulatory Authority; and Circular dated 28.10.2020 issued by this Authority.

3.3 It is submitted that possession was offered to complainant on 12.09.2022 but possession was taken by him on 22.12.2022 after a delay of 101 days in violation of stipulated period of two months as per Section 19(10) of the Act. Thus, complainant is liable to pay holding charges and also interest in making payment.

While parawise reply

3.4 It is stated that a sum of Rs.1,61,604/- including Rs.16,160.44 deducted under the head of tax/TDS) was paid/adjusted as interest for the period of delay to complainant prior to execution of conveyance deed. It is also averred in para 1 of parawise reply that "*Respondent during the issuance of letter of offer of possession also given the benefit of Rs.4,67,531/- under the head of early payment rebate and Rs.1,92,386.40 under the head of GST benefit....*"



3.5 It is also submitted that if this Authority decided for further payment, then the amount of Rs.1,61,604/- be ordered to be deducted from the awarded interest. It is the prayer of respondent to dismiss the complaint with costs.

4. Complainant submitted rejoinder vide this Authority's Diary No.8573 12.12.2023 reiterating the contents of complaint. It is added that copy of Completion Certificate was not provided to complainant as required under Section 11(4)(b) of the Act of 2016. Complainant submitted that apartment was purchased under 'construction linked plan' and for the delay of 34 days, respondent charged Rs.21,947/- from complainant. He has also cited Annexure R-10 which shows that all payments were made by complainant in time. In reply to copy of order dated 18.08.2021 of Appeal No.100 of 2021, annexed by respondent, passed by Hon'ble Real Estate Appellate Tribunal, Punjab, wherein the Hon'ble Appellate Tribunal Punjab granted benefit of 4 to 5 months on account of *force majeure*, complainant emphasized that possession was to be handed over in October 2019 and this order was passed on 18.08.2021 i.e much later to the date of possession. Complainant also cited the judgement titled "*M/s Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and Ors.*" (Civil Appeal Nos. 6745-6749 and 6750-6757 of 2021 decided on 11.11.2021 wherein it has been held that "*If the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of agreement, then allottee's right under the Act to seek refund/claim interest for delay is unconditional and absolute..*"). It is the prayer of complainant that in view of above citation of Hon'ble Supreme Court, this complaint be allowed.

5. Counsel for complainant has also placed on record "clarification regarding calculation of 1141 days" in continuation of his arguments addressed on 03.07.2025. It is stated that as per Email (Annexure C-2) sent by respondent the work of the Tower was started in second quarter of 2016.

Possession of the apartment was to be delivered to complainant on or before October 2019 but was handed over only on 22.12.2022 thus there is delay of 1141 days as calculated by complainant:

Sr.No.	Year	Months
1	Second quarter 2016 (date of start of construction)	8 months
2	2017	12 months
3	2018	12 months
4	October 2019	10 months
	Total	42 months

6. Complainant submitted the following table to show the calculation of 1166 days but claiming interest only for 1141 days:

Sr.No.	Year	Months	Days
1	October 2019 to December 2019	3 months	92
2	2020	12 months	365
3	2021	12 months	365
4	22.12.2022-on which possession was given.	11 months 8 days	344
	Total		1166

7. It is also submitted that possession was actually handed over by respondent after execution of Conveyance Deed on 30.03.2023. It is further submitted that delay penalty benefit of Rs.1,45,444/- for 114 was given only at the rate of 9% p.a. which should be at the prescribed rate of bank + 2% as per Act of 2016.

8. The undersigned heard the arguments of both Counsels on the stipulated date.

9. Counsel for complainant argued on the lines of his complaint and rejoinder. He admitted that possession was handed over to him on 22.12.2022 and thereafter conveyance deed was executed on 30.03.2023. It is the prayer of complainant that respondent has paid only interest for 114 days that too at



lesser rate of interest than the prescribed rate of interest as mandated under the Act of 2016 against the actual days of 1141 days.

10. Counsel for respondent reiterated the contents of the reply and sought exemption of covid-19 in view of order dated 18.08.2021 passed by Hon'ble Real Estate Appellate Tribunal, Punjab in the matter of Appeal No.100 of 2021.

11. The undersigned considered the rival contentions of both the parties and also gone through the available record of this complaint.

12. The only dispute is regarding calculation of the days of interest claimed by complainant in view of Clause-4 of Apartment Buyer Agreement dated 31.07.2017 and for the sake of convenience/calculation it reads as under:-

**"4. DELAY IN DELIVERY OF POSSESSION OF THE APARTMENT**

*4.1 The possession of the Apartment is proposed to be offered by the Company to the Intending Allottee(s) within 42 (fourty two) months for Towers upto 20 (Twenty) stories and 54 (fifty four) months for tower above 20(twenty) stories from the date of signing of Apartment Buyer Apartment or Start of Construction whichever is earlier, subject to force majeure circumstances and provided all amounts due and payable by the Intending Allottee(s) as provided herein have been paid by the Intending Allottee to the Company...."*

13. The abovementioned clause, however, does not provide any definite illustration to ascertain the start of construction.

13.1 Herein vide Annexure C-2 through email (without date) annexed by complainant himself received from Shri Aditya Pandey, Customer Care Team of respondent reads as under:-

*"Dear Mr. Sahil*

*Namaskar!*

*This is with reference to the trailing email, please be noted that construction work of Tower-7 was started in 2<sup>nd</sup> quarter of 2016.*

*....*

*Regards*

*Aditya Pandey*

*Customer Care Team"*



14. It is a matter of record that complainant was allotted Apartment No.506 in Tower-07, Floor Fifty in Hero Homes, Mohali as per Apartment Buyer Agreement dated 31.07.2017. Thus, for calculating the period of interest the undersigned is considering the start of construction from 2<sup>nd</sup> quarter of 2016. It is also admitted by complainant that offer of possession dated 12.09.2022 was sent to complainant and complainant has taken over possession of the apartment on 22.12.2022 as Annexure-12 (attached by respondent with his reply) signed by complainant. Respondent has also attached a copy of Occupancy Certificate dated 12.09.2022 issued by Greater Mohali Area Development Authority vide Memo No.GMADA-SDO(B)/GMADA/22-23/PIO/130.

15. As per Section 19(10) of the Act of 2016 it is mandated that "every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the Occupancy Certificate issued for the said apartment, plot or building, as the case may be.". Thus, it is held that complainant was to take possession within two months of the issue of occupancy certificate dated 12.09.2022 i.e latest by 11.11.2022. However, he has taken possession on 22.12.2022.

16. From the above it is concluded that complainant is entitled for payment of interest from 16.11.2019 (being mid of 2<sup>nd</sup> quarter of 2016) till 11.11.2022 only. It is the admitted case of complainant that he has been granted interest upto 114 days that too at lesser rate of interest i.e. at the rate of 9% p.a.


17. The argument of respondent that the period of Covid-19 concession of 4 months granted by Hon'ble Real Estate Appellate Tribunal, Punjab in Appeal No.100 of 2021 vide order dated 18.08.2021 may be allowed. However, it is noteworthy that construction was started in April 2016 and possession as decided above is on 01.10.2019. The Covid-19 was commenced with effect from March 2020 which is later than the possession date. Thus, no relief is granted to respondent on this count.

18. As a result of above discussion, respondent is directed:-

18.1 To pay interest under Section 18(1) of the Act of 2016 at the rate of **11.10%** per annum (today's State Bank of India highest Marginal Cost of Lending Rate of **9.10%** plus two percent) prescribed in Rule 16 of the Rules of 2017 on the amount paid by complainant with effect from 01.10.2019 till 11.11.2022 within ninety days as stipulated in Rule 17 of the Rules of 2017 from the date of receipt of this order.

18.2 However, it is made clear that amount of Rs.1,61,604/- already paid by respondent towards interest for the period of 114 days be set off from the due interest awarded to complainant.

19. File be consigned to record room after due compliance.

  
(Binod Kumar Singh)  
Member, RERA, Punjab