

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
 AUTHORITY, GURUGRAM**

Order pronounced on: 12.04.2022

NAME OF THE BUILDER		BPTP	
PROJECT NAME		Park Generation	APPEARANCE
1	CR/2221/2018	Mrs. Rashmi Budhraj V/S BPTP Limited	Sh. KK Kohli Sh. Venket Rao
2	CR/373/2019	Mr. Hardeep Singh and Mrs. Satinder Kaur V/S BPTP Limited	Sh. KK Kohli Sh. Venket Rao
3	CR/628/2019	Mr. Umesh Sehgal and Mrs. Sonia Arora V/S BPTP Limited	Sh. KK Kohli Sh. Venket Rao
4	CR/947/2019	Mr. Anuj Mehta and Mrs. Sukhbir rani mehta V/s BPTP Limited	Sh. KK Kohli Sh. Venket Rao
5	CR/5362/2019	Sanjeet Kumar V/S BPTP Limited	Ms. Priyanka Sh. Venket Rao
6	CR/5374/2019	Rekha Sharma V/S BPTP Limited	Ms. Priyanka Sh. Venket Rao
7	CR/5622/2019	Vimal Kumar V/S BPTP Limited	Sh. GS Jarodia Sh. Venket Rao
8	CR/5996/2019	Munish Kumar V/s BPTP Limited	Sh. KK Kohli Sh. Venket Rao
9	CR/6104/2019	Sunita Joshi V/S BPTP Limited	Sh. Sukhbir Yadav Sh. Venket Rao
10	CR/6340/2019	Ankur Gupta V/S BPTP Limited	Sh. Pawan Kumar Ray Sh. Venket Rao
11	CR/409/2020	Ashima Arora V/S BPTP Limited	Sh. Sukun KS
12	CR/545/2020	Kashinath Memani V/S BPTP Limited	Ms. Suman Khitan Sh. Venket Rao

**CORAM:**

 Dr. K.K. Khandelwal  
 Shri Vijay Kumar Goyal

 Chairman  
 Member

**ORDER**

1. This order shall dispose of all the 12 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11 (4) (a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, Park Generation (group housing complex) being developed by the same respondent promoter i.e., BPTP. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges. In several complaints, the complainants have refuted various charges like increase in super area, cost escalation, STP charges, Taxes viz GST and VAT etc, advance maintenance charges, holding charges, PLC etc.
3. The details of the complaints, reply status, unit no., date of agreement, date of environment clearance, date of sanction of building plans, due date of possession, offer of possession and relief sought are given in the tabular form below:

Project: PARK GENERATIONS, Sector-37-D, Gurugram								
Possession Clause(3.1):- "36 months from the date of Flat Buyer Agreement with a grace period of 180 days for finishing work and pursuing the occupancy certificate etc. from DTCP in respect of the project 'Park Generations'								
Note:- The concerned grace period is not allowed in computing the due date of possession.								
Sr. No	Complaint No. Title Date of filing	Reply status	Unit No.	Date of allotment letter	Date of agreement	Due date of possession	Offer of possession	Relief Sought
1	CR/2221/2018 Rashmi Budhiraja Vs BPTP Ltd. DOF:- 18.12.2018	Reply Received	1602, 16th Floor, Tower- T6	19.12.2012 (Page no.35 of complaint)	16.11.2012 (Page no. 42 of complaint)	16.11.2015	26.10.2019 (Annexure P.L in the complaint)  T.C:- Rs.91,66,989/- A.P:- Rs.78,38,624.39/- (Vide statement of account as mentioned in annexure P.L in the complaint )	1. DPC 2. Possession 3. To Quash the escalation cost of Rs.6,50,377/- 4. To Quash increased the Super area of the flat as carpet area remains the same as previous. 5. To Quash the Vat charges and will be pay own. 6. To Quash the demand of advance maintenance as of now. 7. Pass an order for payment of GST amount leavied upon complainants and taken the benefit of input credit by builder.
2	CR/373/2019 Mr Hardeep Singh and Mrs Satinder Kaur v/s BPTP Limited DOF:- 29.01.2019	Reply Received	"704 7th Floor, Tower- T4"	"17.12.2012 (Page no. 57 of reply)"	"18-01-2013 (Page no. 59 of reply)"	18.01.2016	"26.10.2019 (Page no. 143 of reply)  T.C:- Rs.75,47,493.26/- A.P:- Rs.64,16,364.40/- (Vide statement of account on page no. 146 of reply)"	"1. DPC 2. Possession 3. To Quash the escalation cost of Rs.5,45,628/- 4. To Quash increased the Super area of the flat as carpet area remains the same as previous. 5. To Quash the Vat charges and will be pay own. 6. To Quash the demand of advance maintenance as of now. 7. Pass an order for payment of GST amount leavied upon



								complainants and taken the benefit of input credit by builder."
3	"CR/628/2019 Umesh Sehgal and Sonia Arora v/s BPTP Limited DOF:- 12.02.2019 "	Reply Received	"1103, 11th Floor, Tower-T1"	"17.12.2012 (Page no. 35 of complaint)"	"03.12.2012 (Page no. 38 of complaint)"	03.12.2015	"17.10.2018 (Page no. 16 of complaint)  T.C:-Rs. 89,85,667.61/- A.P:- Rs.76,64,783.89/- (Vide statement of account on page no. 19 of complaint)"	"1. DPC 2. Possession 3. To Quash the escalation cost of Rs.6,50,736/- 4. To Quash increased the Super area of the flat as carpet area remains the same as previous. 5. To Quash the Vat charges and will be pay own. 6. To Quash the demand of advance maintenance as of now. 7. Pass an order for payment of GST amount leavied upon complainants and taken the benefit of input credit by builder."
4	"CR/947/2019 Anuj Mehta and Sukhbir Rani Mehta v/s BPTP Limited DOF:- 07.03.2019 "	Reply Received	"301, 3rd Floor, Tower-T6"	"17.12.2012 (Page no. 85 of reply)"	"03.12.2012 (Page no. 33 of complaint)"	03.12.2015	"26.10.2019 (Page no. 122 of reply)  T.C:- Rs.94,31,868.64/- A.P:- Rs.77,28,806.74/- (Vide statement of account on page no. 125 of reply)"	"1. DPC 2. Possession 3. To Quash the escalation cost of Rs.6,79,793/- 4. To Quash increased the Super area of the flat as carpet area remains the same as previous. 5. To Quash the Vat charges and will be pay own. 6. To Quash the demand of advance maintenance as of now. 7. Pass an order for payment of GST amount leavied upon complainants and taken the benefit of input credit by



								builder."
5	"CR/5362/2019 Sanjeet Kumar vs Bptp Ltd. DOF:- 14.11.2019 "	Reply Received	"1601, 16th Floor, Tower- T5"	"17.12.2012 (Page no. 60 of reply)"	"06.02.2013 (Page no. 62 of reply)"	06.02.2016	"15.10.2019 (Page no. 145 of reply)  T.C:- Rs. 80,66,979.27/- A.P:- Rs.69,26,560.28/- (Vide statement of account on page no. 148 of reply) "	"1. DPC till actual physical possession 2. To quash the escalation cost. 3. To Quash increased the Super area of the flat as carpet area remains the same as previous. 4. To Quash the Vat charges and will be pay own. 5. To Quash the demand of advance maintenance as of now. 6. Pass an order for payment of GST amount levied upon complainants and taken the benefit of input credit by builder. "
6	CR/5374/2019 Rekha Sharma Vs Bptp Ltd  DOF:- 14.11.2019	Reply Received	301, 3rd Floor, Tower- T4	17.12.2012 (Page no. 54 of complaint)	09.02.2013 (Page no. 61 of complaint)	09.02.2015	15.10.2019 (Page no. 24 of complaint)  T.C:- Rs. 80,69,628.83/- A.P:-	1. DPC 2. Possession 3. To quash the escalation cost of Rs.5,88,317/- 4. To Quash increased the Super area of the



							Rs.64,14,959.34/- (Vide statement of account on page no. 27 of complaint)	flat as carpet area remains the same as previous. 5. To Quash the Vat charges and will be pay own. 6. To Quash the demand of advance maintenance as of now. 7. Pass an order for payment of GST amount leaved upon complainants and taken the benefit of input credit by builder.
7	"CR/5622/2019 Vimal Kumar V/S BPTP LIMITED DOF:- 13.12.2019"	Reply Received	"1402, 14th Floor Tower-T-6"	17.12.2012 (Page no. 65 of reply)	"21.02.2013 (Page no. 73 of reply)"	21.02.2016	"15.10.2019 (Page no. 144 of reply)  T.C:- Rs. 94,01,546.45/- A.P:- Rs.76,93,029.94/- (Vide statement of account on page no. 147 of reply)"	"1.DPC 2. Possession 3.Direct the respondent to Quash Cost escalation charges, increase in super area charges, GST charges, AMC charges for the period of 13.02.2020 to 11.02.2021. 4. Holding charges mentioned in the letter of possession be quashed."
8	"CR/5996/2019 Munish Kumar V/S MS BPTP LIMITED DOF:- 20.12.2019"	Reply Received	"904, 9th floor Tower-T-4"	18.12.2012 (Page no. 38 of complaint)	"03.01.2013 (Page no. 63 of complaint)"	03.01.2016	"15.10.2019 (Page no. 115 of complaint)  T.C:-Rs. 73,91,892.46/- A.P:- Rs.62,69,748.09/- (Vide statement of account on page no. 118 of complaint)"	"1.DPC 2.Possession 3. Quash Escalation Cost 4. Quash Increase in Super Area. 5. Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder. 6. Direct the respondent to quash one sided clauses mentioned in the FBA."

9	CR/6104/2019 Sunita Joshi VS. BPTP Ltd.  DOF:- 10.12.2019	Reply Received	304, 3rd floor, Tower T-5	14.12.2012 (Page no. 69 of reply)	18.01.2013 (Page no. 71 of reply)	18.01.2016	15.10.2019 (Page no. 144 of reply)  T.C:- Rs. 81,25,586.21/- A.P:- Rs.64,49,565.78/- (Vide statement of account on page no. 147 of reply)	1. DPC 2. Restrain from demanding escalation cost of Rs. 5,88,317/- 3. Restrain from demanding ECC + FF + PBIC of Rs.1,64,000/- 4. Restrain from demanding GST of Rs. 1,82,172/- 5. Direct the respondent to provide calculation and justification about increased in area i.e., 170 sq. ft. [Page 13 of complaint]
10	CR/6340/2019 Ankur Gupta V/S BPTP LIMITED  DOF:- 09.12.2019	Reply Received	1202, 12th floor, Tower T-5	17.12.2012 (Page no. 57 of complaint)	07.12.2012 (Page no. 26 of complaint)	07.12.2015	15.10.2019 (Page no. 143 of reply)  T.C:- Rs. 78,68,118.77/- A.P:- Rs.67,18,743.59/- (Vide statement of account on page no. 146 of reply)	1.DPC 2. Restrain the respondents from imposing any escalation charges on delivery of possession of the unit. 3. Restrain the respondents from raising any parking charges at the time of offer of possession, 4. Direct the respondent to waive off/refund car parking charges, escalation charges, maintenance charges and other taxes which are either not applicable on the complainant or not part of the FBA dated 07.12.2012.

11	CR/409/2020 Ashima Arora VS BPTP Ltd.  DOF:- 22.01.2020	Reply Received	401, 4th floor, Tower T-2	14.12.2012 (Page no. 101 of reply)	19.11.2012 (Page no. 70 of reply)	19.11.2015	17.10.2018 (Page no. 133 of reply)  T.C:- Rs. 74,36,041.47/- A.P:- Rs.61,93,697.76/- (Vide statement of account on page no. 136 of reply)	1. DPC 2. Possession 3. To call back illegal demands (no demands specified)
12	CR/545/2020 Kashi Nath Memani V/S BPTP Limited DOF:- 13.02.2020	Reply Received	1604, 16th Floor Tower T-6	19.12.2012 (Page no. 122 of complaint)	16.12.2019 (Page no.209 of complaint)  Though the Copy of BBA was sent by the respondent to the complainant on 25.10.2012 (page 72 of reply) But the actual date of execution of BBA is 16.12.2019 (Page no.209 of complaint)	16.06.2025 (Calculated from the second FBA which is duly signed by both the parties)	16.10.2019 (Page no. 126 of reply)  T.C:- Rs. 93,43,994.04/- A.P:- Rs.78,96,104.32/- (Page no. 129 of reply)	i. DPC ii. Possession.

4. The aforesaid complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainants against the promoter M/S BPTP on account of violations of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation



on the part of the promoter under section 11(4)(a) of the Act ibid apart from contractual obligations. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.

5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18 of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case Cr/373/2019 titled as Mr. Hardeep Singh and Mrs. Satinder Kaur V/s M/s BPTP are being taken into consideration for determining the issues of the delay possession charges, increase in super area, cost escalation, STP charges, Taxes viz GST and VAT etc, advance maintenance charges, holding charges, PLC etc.

**A. Unit and project related details**

8. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/373/2019**

S. No.	Heads	Description
1.	Name of the project	"Park Generations, Sector 37-D, Gurugram, Haryana
2.	Nature of the project	Affordable Housing Policy
3.	Project area	Cannot be ascertained
4.	DTCP license no. and validity status	83 of 2008 issued on 05.04.2008 valid up to 04.04.2025. 94 of 2011 issued on 24.10.2011 valid up to 23.10.2019.
5.	Name of the license holder of 83 of 2008	super belts and 4 others
6.	Name of the license holder of 94 of 2011	countrywide promoters pvt. Ltd.
6.	RERA registration number	07 of 2018 dated 03.01.2018
7.	Date of execution of flat buyer's agreement	18.01.2013 (annexure R-6 on page no. 62 of reply)
8.	Unit no.	704, 7 <sup>th</sup> floor, tower-T4 (annexure R-6 on page no. 68 of reply)
9.	Unit area admeasuring	1470 sq. ft. (annexure R-6 on page no. 68 of reply)
10.	Revised unit area	1521 sq. ft. (annexure R-25 on page no. 143 of reply)
11.	Total consideration (Basic sale price)	Rs.75,47,493.26/- (annexure R-25 on page no. 146 of reply)
12.	Total amount paid by the complainant	Rs.64,16,364.40/-

		(annexure R-25 on page no. 146 of reply)
13.	Due date of delivery of possession	18.01.2016 <b>Note:</b> [calculated from the date of execution of FBA]
14.	Occupation certificate date	20.09.2019 (annexure R-18 on page no. 172 of reply of complaint no. 5587 of 2019)
15.	Offer of possession	26.10.2019 (annexure R-25 on page no. 146 of reply)
16.	Grace period	Grace period is not allowed

#### B. Facts of the complaint

The complainants have submitted as under: -

9. That the complainants are law abiding consumer who have been cheated by the malpractices adopted by the respondent stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and they were in need to own a house for their family.
10. That one-sided development agreement has been one of the core concerns of home buyers. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the builder imposes unfair and discriminatory terms and conditions. The complainants were subjected to unethical trade practice as well as subject to harassment, flat buyer agreement

clause of escalation cost, many hidden charges which were forcefully imposed on the buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and discriminatory.

11. That the complainants approached the respondent for booking of a flat admeasuring 1470 sq ft 3 BHK in BPTP park generations sector-37 D, Gurugram and paid a booking amount of Rs 500000/- dated 15/09/2011. They were allotted a flat T4-0704 admeasuring 1470 sq ft. 3 BHK in BPTP park generation, sector-37-D, Gurugram, dated 17.12.2012.
12. That the respondent to dupe the complainants in its nefarious net even executed buyer's agreement signed between them and M/S BPTP limited on 18.01.2013, just to create a false belief that the project would be completed in time bound manner but in the garb of that agreement, persistently raised demands due to which it was able to extract huge amount of money from the complainants. The respondent executed the FBA after extracting more than 30% of amount of total sale consideration being illegal and arbitrary. The total cost of the said flat is Rs. 6459654/- exclusive of taxes.
13. That it is pertinent mentioned here that according to the statement of account, the complainants paid a sum of Rs. 6416363/- to the respondent till date and paid amount as demanded by it without doing appropriate work on the said project, which is illegal and arbitrary.
14. That respondent was liable to hand over the possession of the said unit before 16.01.2016 as per Buyer's agreement clause no 3.1 but

builder offered the possession of flat on 26.10.2019 and not in a habitable condition.

15. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), the complainants have fulfilled their responsibilities in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, they herein are not in breach of any of its terms of the agreement.
16. That complainants have paid all the instalments timely and deposited Rs. 6416363/-. However, the respondent in an endeavour to extract money from allottees devised a payment plan under which it linked more than 30 % amount of total paid against as an advance and rest of 65% amount linked with the construction of super structure only) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and internal development of facilities amenities and after taking the same, the respondent has not bothered to do any development on the project.
17. That the executed FBA is one sided and at the time offer of possession, the builder used new trick for extracted extra money from complainants and forcibly imposed escalation cost of Rs 545628/- and wrongly justified it. It is understandable that the complainants booked the flat in 2011, to be delivered by 2016 ( as per agreement be delivered after 36 months from execution of FBA) and therefore, the inflation was calculated at the time of booking. If project was delayed by the respondent, complainants are not responsible. When we see inflation index of past 18 year during this

period, the rate of inflation decreased. So, the builder is liable to give discount in basic sale price rather than forcibly imposing escalation cost with unjustified reasons. The basic sale price fixed at the time of booking and demand of escalation cost are totally illegal, arbitrary, unjustified and unacceptable.

18. That the complainants invested their all-life savings and despite making regular payments as per the payment plan, the respondent demanded more money than due from them as per buyer agreement. Due to the conduct of respondent, the complainants had no option but to approach this hon'ble authority as the former failed to provide habitable place to the later and further demanded more money vide offer of possession.
19. That respondent has charged compounded interest @ 18% on delayed installments as per clause 2011 of FBA and offered a delay penalty of Rs. Rs. 5/- per month per sq ft, which is totally illegal and arbitrary.
20. That as the delivery of the apartment was due on Jan, 2016 prior to the coming into of force of the GST Act, 2016 i.e. 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants. But it is strange that the builder collects the GST from complainants and enjoys the input credit as a bonus, which is matter of investigation.
21. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA with a malicious and fraudulent intention and caused deliberate and intentional huge



mental and physical harassment to the complainants and their family has been rudely and cruelly been dashed the savored dreams, hopes and expectations of the complainants to the ground and they are eminently justified in seeking the interest on paid money for the delay period.

22. That the respondent at the time of offer of possession forcibly imposed escalation cost and increased the super area of flat 1470 sq ft to 1521 sq ft. But the carpet area remains the same which has been objected to by the complainants at the time of offer of possession. It is unjustified and illegal.
23. That the respondent had illegal and unjustified demand towards VAT amount, an intimidate attempt to coerce and obtain an illegal and unfounded claim amount.
24. That the respondent demanded 20 months of advance maintenance charges amounting payable as per the Haryana Apartment Ownership Act and the charges are to be paid monthly. Hence, asking for the maintenance charges in advance for 20 months, without having giving the possession and without the registration of the flat is absolutely illegal.
25. That keeping in view the snail pace of work at the construction site and half-hearted promises of the respondent, and tricks of extra more and more money from complainants pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent their *entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in*

which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

**C. Relief sought by the complainants:**

26. The complainants have sought following relief(s):

- i) Pass an order for delay interest on paid amount along with pendent lite and future interest till actual possession thereon @18%.
- ii) Direct the respondent to quash the escalation cost of Rs. 545628/-.
- iii) Direct the respondent to quash the increased in super area as carpet area remain same as previous.
- iv) Direct the respondent to quash the VAT charges and will pay by own
- v) Direct the respondent to quash the demand of advance maintenance as of now.
- vi) Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder

27. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

The respondent has contested the complaint on the following grounds: -



28. That the respondent had diligently applied for Registration of the Project in question i.e. "park generations located at Sector-37D. Gurugram before this Hon'ble Authority and accordingly, registration certificate dated 03.01.2018 was issued by this Hon'ble Authority wherein the registration for the said project was valid for a period till 30.11.2018. Thereafter, the respondent applied for extension of the said project on 30.11.2018, meanwhile occupation certificate with respect to the unit in question was granted on 20.09.2019.
29. That the complainants have approached this Hon'ble Authority for redressal of alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the Court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.
- A. That the complainants have concealed from this Hon'ble Authority that with a motive to encourage them to make payment of the dues within the stipulated time, the respondent also gave additional incentive in the form of timely payment discount (TPD) to them and in fact, till date, they have availed TPD of Rs 15,65,83 74/.

- B. That the complainants have also concealed from this Hon'ble Authority that they have given the consent to the unit in question with the vide letter dated 04.07.2012 and has voluntarily accepted and agreed the allotment of the said unit.
- C. That the complainants in the entire complaint concealed the fact that updates regarding the status of the project were provided to them by the respondent vide emails dated 22.06.2017, 11.07.2017, 23.08.2017, 11.12.2017, 09.04.2018, 07.05.2018, 15.06.2018, 02.08.2018, 09.09.2018, 04.12.2018, 23.02.2019, 19.04.2019 and 15.05.2019 respectively.
- D. That the complainants have also concealed from this Hon'ble Authority that the respondent being a customer centric company has always addressed the concerns of the complainants and had requested them and again to visit the office of the respondent in order to amicably resolve their concerns. However, notwithstanding the several efforts made by the respondent to attend to the queries of the complainant's complete satisfaction, they erroneously proceeded to file the present vexatious complaint before this authority against the respondent.
- E. That the complainants have also concealed from this Hon'ble Authority that timely payment was the essence of the contract and they have defaulted in making the payment of various demands because of which the respondent was constrained to issue various reminder letters to the complainants.

From the above, it is very well established, that the complainants have approached this Hon'ble Authority with unclean hands by distorting/concealing/ misrepresenting the

relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainants is to unjustly enrich themselves at the expense of the respondent by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

30. That the charges qua VAT/GST or any fresh incidence of tax were duly agreed by the complainants vide clause 8 of the booking application, wherein they have agreed to pay VAT, service tax and all other charges as were be communicated from time to time. Vide said clause, the complainants further agreed to pay any tax/charges including any fresh incidence of tax as may be levied by the Government of Haryana/Competent Authority/Central Government, even if it is retrospective in effect as and when demanded by the respondent on the super area of the flat without any demur and protest. It is further submitted that the said clause has been duly incorporated and agreed in the FBA vide clause 1.39. In this context, the following clause of the FBA is noteworthy. "Statutory dues shall mean and include all, but not limited to, municipal taxes, property tax, infrastructure development tax/charges, VAT, service tax, any fresh incidence of tax and any other statutory charges etc. to be levied by any Authority, including any enhancement of such taxes or dues by the State Government or the Authority, even if they are retrospective in effect as may be levied on the colony or the land.

31. That the demand qua VAT has been duly paid by the complainants without any protest and accordingly, the receipt for the same was also issued by the respondent. It is further submitted that the said charges have been agreed by the complainants right from the beginning and despite being agreed charges, they now at such belated stage are raising objections against the same with a view to gain at the expenses of the respondent.
32. That vide clause 15 of the booking application, cost escalation and STP charges were also duly agreed to by the complainants at the time of booking and the same were incorporated in the FBA. It was further submitted that the cost escalation and STP charges if any could be ascertained and finalized at the time of offer of possession. Thus, the said charges were already agreed upon by the complainants at the stage of entering into the transaction. It is further important to point out at this juncture that the undertaking to pay the above mentioned charges was comprehensively set out in the FBA.
33. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties

**E. Observations of the authority**

34. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST and Vat etc, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, fire

fighting/power backup charges are involved in all these cases and others pending against the respondent in this project as well as in other projects developed by the respondent, so vide order dated 06.07.2021 and 17.08.2021, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were directed to file objections to that report if any. Though the respondent sought time to file the objections but, did not opt for the same despite time given in this regard. The executive summary of the committee report and the recommendations so made in respect of the project in question i.e. 'Park Generation' are as under:

- a) **Super area:** The respondent has increased the super area of the unit from 1470 sq. ft. to 1521 sq. ft. at the time of offer of possession in the Park Generation project, whereas the covered area of the unit remains the same.

**Recommendations:**

- i) The inclusion of an area under the pool balancing tank as a common area is not justified. Hence, the area under the pool balancing tank, measuring 432.48 sq. ft. (Park Generation), may be excluded from the category of common areas.

- ii) The area under the feature wall elevation measuring 12054 sq. ft. (Park Generation) may be excluded from the common areas being an architectural feature.
- iii) Consequent to exclusion of the above-mentioned components from the list of the common areas, the additional common areas will decrease from 26300 sq. ft. to 13813 sq. ft (Park Generation). Accordingly, the saleable area/specific area factor (731573/580001.38) will reduce from 1.2829 to 1.2613 (Park Generation).
- b) **Cost escalation:** The committee considers the estimated cost of construction as certified by the chartered accountant and thereafter applies various indexation and demands a cost escalation of Rs. 588 per sq. ft.  
**Recommendation:** After analysis of various factors as detailed in the committee report, the committee is of the view that an escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer.
- c) **STP Charges and Electric Connection (ECC) + Fire Fighting (FF)+Power-Backup Charges (PBIC):** the following recommendations were made:  
**Recommendation:**
- i) The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges are demanded from the allottees of Spacio @ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.

- ii) The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.
- d) **Annual Maintenance Charges:** This charge should be taken on a monthly/quarterly basis rather than annual basis.  
*Recommendation:* After deliberation, it was agreed upon that the developer will recover maintenance charges quarterly, instead of annually.
- e) **Car Parking Charges:** The complainants requested that the car parking allotted to the allottees be also included in the conveyance deed being an integral part of the units.  
*Recommendation:* After discussion, the committee finds no dispute on the issue and it was agreed upon that the car parking along with its cost shall be included in the conveyance deed to be executed with the allottees.
- f) **GST/VAT/Service Tax:** The GST came into force in the year 2017, therefore, it is a fresh tax. The possession of the flat was supposed to be delivered before the implementation of GST. Therefore, the tax which has come into existence after the deemed date of delivery should not be levied being unjustified. The main questions which arose for the consideration of the committee were:
- i. Whether the respondent is justified in demanding GST,

VAT and service tax?

- ii. If applicable, what is the rate of HVAT, GST and service tax to be charged to customers?

**Recommendation:** After analysis of various factors as detailed in the committee report, the committee is view that the following taxation to be allowed:

- i. Haryana Value Added Tax: The promoter is entitled to charge VAT from the allottee for the period up to 30.06.2017 as per the rate specified in the below table:

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes
From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes

- i. Service Tax: The service tax rate to be charged from the customer

Service tax Rates/Date	Basic Rates of Service Tax	Education Cess	Secondary & Higher Education Cess	Swatch Bharat Cess	Krishi Kalyan	Total Tax Rate	Abatement %	Effective Tax Rate
01 July 2010 to 31st	10%	2%	1%			10.30%		10.30%



March 2012								
1st April 2012 to 31st May 2015	12%	2%	1%			12.36%	75%*/70%	3.71%
1st June 2015 to 14th Nov 2015	14%					14%	75%*/70%	4.20%
15th Nov 2015 to 31st May 2016	14%			0.5%		14.50%	75%*/70%	4.35%
1st June 2016 to 30th June 2017	14%			0.5%	0.5%	15%	70%	4.50%

## ii. Project Specific GST to be refunded:

Particulars	Spacio
HVAT (after 31.03.2014) (A)	4.51%
Service Tax (B)	4.50%
Pre-GST Rate (C=A+B)	9.01%
GST Rate (D)	12.00%
Incremental Rate E= (D-C)	2.99%
Less: Anti-Profitteering benefit passed if any till March 2019 (F)	2.46%
Amount to be refunded Only if greater than (E- F) (G)	0.53%

35. The summarized recommendations of the committee for the project in question i.e., Generation in tabular form are as under:

Sr. No	Key Issues	Recommendations			
		Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
1.	Super Area	Consequent to exclusion of the pool balancing tank and area under the feature wall from the list of the common areas, the additional common areas will decrease from 26300 sq. ft. to 13813.48 sq. ft (Park Generation). Accordingly, the saleable area/specific area factor (731573/580001.38) will reduce from 1.2829 to 1.2613 (Park Generation).			
2.	Cost Escalation:	After analysis of various factors as detailed in the committee report, The committee is of the view that an escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer.			
3.	STP Charges and Electric Connection (ECC) + Fire Fighting (FF)+Power-Backup Charges (PBIC):	The allottees of Park Generation may be charged in respect of STP charges (@INR 8.85 sq. ft. and ECC+FFC+PBIC (@ INR 100 per sq. ft.)			
4.	Annual Maintenance Charges	It was agreed upon that the developer will recover maintenance charges quarterly, instead of annually			
5.	Car Parking Charges:	After discussion, the committee finds no dispute on the issue and it was agreed upon that the car parking along with its cost shall be included in the conveyance deed to be executed with the allottees			
6.	HVAT				
		Up to 31.03.2014	Haryana Alternative	1.05 %	Yes

		Tax Compliance Scheme		
		From 01.04.2014 to 30.06.2017	Normal Scheme	4.51% Yes
7.	Service Tax	<b>Service tax Rates/Date</b>		<b>Effective Tax Rate after abatement</b>
		01 July 2010 to 31st March 2012		10.30%
		1st April 2012 to 31st May 2015		3.71%
		1st June 2015 to 14th Nov 2015		4.20%
		15th Nov 2015 to 31st May 2016		4.35%
		1st June 2016 to 30th June 2017		4.50%
8.	GST	<b>Particulars</b>		<b>Park Generation</b>
		HVAT (after 31.03.2014) (A)		4.51%
		Service Tax (B)		4.50%
		Pre-GST Rate (C = A+B)		9.01%
		GST Rate (D)		12.00%
		Incremental Rate E= (D-C)		2.99%
		Less: Anti-Profitteering benefit passed if any till March 2019 (F)		2.46%
		Amount to be refund only if greater than (E-F) (G)		0.53

**F. Jurisdiction of the authority**

36. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints for the reasons given below.

**F.I Territorial jurisdiction**

37. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaints.

**F.II Subject matter jurisdiction**

38. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

39. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on the objections raised by the respondent**

**G.I Objection regarding untimely payments done by the complainants**

40. It has been contended that the complainants have made default in making payments as a result thereof; the respondent had to issue various reminder letters. Clause 7.3 of the buyer's agreement provides that timely payment of instalment being the essence of the transaction, and the relevant clause is reproduced below:

*"7.3. Time is of essence"*

*'Notwithstanding anything to the contrary contained herein, it is hereby expressly and unconditionally agreed to by the allottee that time is of the essence with respect to the allottee's obligations to make any and all payments hereunder including the payment of any part of the Total price, payment of any and all other applicable charges, considerations, interest, deposits, penalties and other payments such as applicable stamp duty, registration fee etc. and other charges as is stipulated under this agreement.'*

41. At the outset, it is relevant to comment on the said clause of the agreement i.e., "7.3. TIME IS OF ESSENCE" wherein the payments to be made by the complainants had been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even

a single default by the allottees in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite the complainants being in default in making timely payments, the respondent has not exercised his discretion to terminate the buyer's agreement.

**G.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

42. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties.
43. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/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. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of

**Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."
44. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-
- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

45. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any Act/ statutory provision and are not unreasonable or exorbitant in nature.

**H. Findings on the relief sought by the complainants**

**H.I Delay possession charges**

46. In all the complaints, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*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."*

47. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:



*"Clause 3- 3.1.....the seller/confirming party proposes to handover the physical possession of the said unit to the purchaser(s) within a period of 36 months from the date of execution of the Flat buyer agreement (commitment period). The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days after the expiry of said commitment period....."*

48. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.
49. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate

event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

50. The promoter proposed to hand over the possession of the said unit within period of 36 months from the date of execution of the buyer's agreement i.e. 18.01.2013. Therefore, the due date of handing over possession comes out to be 18.01.2016. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 20.09.2019, it is implied that the promoter applied for occupation certificate only on 28.06.2019 which is later than 180 days from the due date of possession i.e., 18.01.2016. This clause clearly implies that the grace period was asked for filing and pursuing occupation certificate. Therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days and does not fulfil the criteria for grant of the grace period. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.
51. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced 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.

52. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
53. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.04.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
54. The definition of term 'interest' as defined under section (za) of the Act provides that 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. The relevant section is reproduced below:

*"(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;"*

55. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

#### **H.II Increase in super area**

56. It is contended that the respondent has increased the super area of the subject unit vide letter of offer of possession dated 26.10.2019 without giving any formal intimation to, or by taking any written consent from the allottees. The said fact has not been denied by the respondent in its reply. The authority observes that the said increase in the area has been as per clause 6 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

**"5 ALTERATIONS IN PLANS, DESIGN AND SPECIFICATION AND RESULTANT CHANGES IN AMOUNTS PAYABLE**

*The seller/confirming party is in the process of developing residential blocks in the park generation in accordance with the approved layout plan for the colony. However, if any changes, alterations, modifications in the tentative building plans and/or tentative drawings are necessitated during the construction of the units or as may be required by any*

*statuary authority(s), or otherwise, the same will be effected suitably, to which the purchaser(s) shall raise no objection and hereby gives his unconditional consent.*

57. On perusal of record , the super area of unit was 1470 sq. ft. as per the flat buyer's agreement and it was increased by 51 sq. ft. vide letter of offer of possession, resulting in total super area of 1521 sq. ft. The said committee in this regard has made following recommendations while submitting report:

"The above site report was discussed in the meeting of the Committee held on 08.09.2021 and after detailed deliberation, the Committee makes the following recommendations:

- (i). *The inclusion of area under pool balancing tank as common area is not justified. Hence, the area under pool balancing tank, measuring 432.48 sq.ft. (Park Generation) and 684.28 sq. ft. (Spacio) may be excluded from the category of common areas.*
- (ii). *The area under feature wall elevation measuring 12054 sq. ft. (Park Generation) and 6665.04 sq. ft. (Park Spacio) may be excluded from the common areas being an architectural feature.*
- (iii). *Consequent upon exclusion of the above mentioned components from the list of the common areas, the additional common areas will decrease from 45713.29 sq. ft. to 38363.97 sq. ft. (Park Spacio) and from 26300 sq.ft. to 13813.48 sq. ft. (Park Generation). Accordingly, saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio) and from 1.2829 to 1.2613 (731573/580001.38, Park Generation). In the instant cases, the super area of the apartment measuring 1865 sq. ft. will reduce to 1851.50 sq. ft. (1434.7 x 1.2905) in park spacio and the super area of the apartment measuring 1521 sq. ft. will reduce to 1496.70 sq. ft. (1186.06x1.2613) in park Generation. Accordingly, the respondent company be directed to pass on this benefits to the remaining complainants/allottees.*
- viii. *The area under the remaining components of the common area mentioned in the Annexure-6(park generation) and Annexure-7 (park spacio) may be allowed to be included in the super area in terms of the enabling clause 2.4 of the agreements."*

58. In the instant case, the super area of the subject flat measuring 1521 sq. ft. would reduce to 1496.70 sq. ft. on the basis of aforesaid recommendations of the committee. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduced from 1.2829 to 1.2613. Accordingly, the super area of the unit be revised and reduced by the respondent and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

### **H.III Cost escalation**

59. The complainants have pleaded that the respondent also imposed escalation cost Rs. 5,45,628/- after increase in super area from 1470 to 1521 sq. ft. without increasing the carpet area. The respondent in this regard took a plea that cost escalation was duly agreed to the complainants at the time of booking and the same was incorporated in the FBA. The undertaking to pay the above mentioned charges was comprehensively set out in the FBA. In this context, following clause of the FBA is noteworthy:

*12.12" The Purchaser(s) understands and agrees that the sale consideration of the Unit comprises of the cost of construction rates applicable on the date of booking, amongst other components The Purchaser(s) further recognizes that due to variation in cost of construction i.e. cost of materials, labour and project management cost, the actual cost of the Unit may experience escalation, and may thus vary The final cost of construction shall be calculated at the stage of completion of the project, should the variance be equal to or less than 5%, of the cost of construction ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party.*

*However, should the cost of construction, upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s), as the case may be, as per actual calculation made by the Seller/Confirming Party."*

60. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. ft. No objections to the report have been raised by either of the party. Even the committee while recommending decrease in escalation charge has gone through booking form, builder buyer agreement and the issues raised by the promoter to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from Rs. 588 per sq. ft to 374.76 per sq. ft. to the allottees of the project. The relevant recommendations of the committee are reproduced below:

***Conclusion:***

*In view of the above discussion, the committee is of the view that escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer."*

61. The authority concurs with the recommendations of the committee and holds that the escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developers.

**H.III STP charges, electrification, firefighting and power backup charges**

In reference to complaint no. 6104 of 2019 titled as Sunita Joshi V/s BPTP Limited, it was contended by the complainant that on 10.12.2019, the respondent issued an offer of possession of unit with addition in area by 170 sq. ft. i.e. 11.56% more than agreed area without any unjust and unreasonable demands under various heads i.e. cost escalation of Rs. 5,88,317/-, Rs. 1,64,000/- on head of ECC+FF+PBIC and Rs. 1,82,172/- on head of GST. On the other hand, the respondent submitted that such charges have been demanded from the allottee in terms of the flat buyer's agreement.

62. The said issue was also referred to the committee and it was observed as under by the committee :

***“Recommendations:***

- i. The Committee examined the contents of the FBAs executed with the allottees of Spacio and Park Generation and found that various charges to be paid by the allottees find mention at clause 2.1 (a to h). Neither, the electrification charges figures anywhere in this clause, nor it has been defined anywhere else in the FBAs. Rather, ECC+FFC+PBIC charges have been mentioned at clause 2.1 (f), which are to be paid at INR 100 per sq. ft.*
- ii. The term electric connection charges (ECC) has been defined at clause 1.16 (Spacio) and Clause 1.19 (Park Generation), which is reproduced below:  
“ECC” or electricity connection charge shall mean the charges for the installation of the electricity meter, arranging electricity connection (s) from Dakshin Haryana Bijli Vidyut Nigam, Haryana and other related charges and expenses.”*
- iii. From the definition of ECC, it is clear that electrification charges are comprised in the electric connection charges and the same have been clubbed with FCC+PBIC and are to be charged @INR 100 per sq. ft. Therefore, the Committee concluded that the respondent has conveyed the electrification charges to the allottees of Spacio in an arbitrary manner and in violation of terms and conditions of the agreement. Accordingly, the Committee recommends:  
A. The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-*



*invoice be deleted and only STP charges be demanded from the allottees of Spacio @ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.*

*B. The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-Invoice shall be amended to that extent accordingly."*

63. The authority concurs with the recommendation made by the committee and holds that the allottees of park generation may be charged in respect of STP charges (@INR 8.85 sq. ft. and ECC+FFC+PBIC (@INR 100 per sq. ft.)

#### **H.IV Advance maintenance charges**

64. The issue with respect to the advance maintenance charges was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

*"D. Annual Maintenance Charges: After deliberation, it was agreed upon that the respondent will recover maintenance charges quarterly, instead of annually."*

65. The authority is of view that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondent before the said committee, the respondent shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondent is ordered to be modified accordingly.

#### **H.V GST**

66. The allottees have also challenged the authority of the respondent builder to raise demand by way of goods and services tax. It is

pleaded by the complainants that while issuing offer of possession, the respondent had raised a demand of Rs.1,22,528/- under the head GST which is illegal and is not liable to repeat to be paid by him.

67. Though the version of respondent is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate (C = A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-Profitteering benefit passed if any till	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%

March 2019 (F)						
Amount to be refund Only if greater than (E- F) (G)	0.36%	0.53%	2.99%	0.41%	2.99%	2.99%

68. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.** passed by the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

69. In appeal no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi, Haryana Real Estate Appellate Tribunal, Chandigarh has upheld the Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra). The relevant para is reproduced below:

*"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."*

70. In all the complaints mentioned in the table of para 3 of this order, the due date of possession was prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the view that the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is

entitled to charge from the allottees the applicable combined rate of VAT and service tax as detailed in para 67 of this order.

#### H.VI VAT charges

71. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards VAT to the tune of Rs. 53,181/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottees agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.
72. The committee took up this issue while preparing report and after considering the submissions made on behalf of the allottees as well as the promoter, observed that the developer is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme. The same is concluded in the table given below:

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Compliance Scheme Tax	1.05 %	Yes

<b>From</b> <b>01.04.2014 to</b> <b>30.06.2017</b>	Normal Scheme	4.51%	Yes
--	---------------	-------	-----

73. The authority concurs with the recommendations of the committee and holds that promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.

#### H.VII Car parking charge

74. The complainants requested that the car parking allotted to the allottees be also included in the conveyance deed being integral part of the units. The committee examined the issue in terms of the provisions of FBAs and observed that the term car parking charges has been defined at clause 1.8 in the FBA, which is reproduced below:

*The charge to be paid by the purchaser(s) to the seller for the exclusive rights of usage of covered/open car parking spaces to be allowed to the purchaser(s) as agreed to be associated with the flat by the Seller subject to the terms of the agreement.*

75. Further, the clause 2.7 of the FBAs mentions that the car parking spaces as may be allotted, shall be part of the flat for his exclusive use and the same shall not have an independent entity and cannot be detached or transferred or alienated or any third party rights can be created, other than when transferred along with the flat.
76. The authority concurs with the recommendations made by the committee and holds that the car parking along with its cost shall

be included in the conveyance deed to be executed with the allottees.

**I. Directions of the authority**

77. Based on above determination of the authority and acceptance of report of the committee, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession as has been mentioned in para 3 of this order till the offer of possession plus 2 months or the date of actual handing over of possession of the subject flat to the complainants, whichever is earlier. The due date of possession and amount on which interest is to be calculated for all the connected complaints are detailed in table given in para 3 of this order..
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay

- the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant(s) which is not part of the builder buyer's agreement save and except in the manner as prescribed in this order.
- vi. **Increase in area:** The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduce from 1.2829 to 1.2613. Accordingly, the super area of the unit be revised and reduced by the respondent and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.
- vii. **Cost escalation:** The authority is of the view that escalation cost can be charged only up to Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- viii. **VAT charges:** The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.
- ix. **GST charges:** In all the complaints mentioned in the table of para 3 of this order, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. The authority is of the view that the respondent/promoter was not entitled




to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements as has been held by Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as *M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi*. Also, the authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 67 of this order.

- x. **Advance maintenance charges:** The authority is of the view that the respondent is right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondent before the said committee, the respondent shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondent is ordered to be modified accordingly.
- xi. **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Park Generation @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached

with the letter of possession of the allottees of park Generation be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f). The statement of accounts-cum-invoice shall be amended to that extent accordingly.

78. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
79. Complaints stands disposed off. True/certified copies of this order be placed in the case file of each matter. There shall be separate decrees in individual cases.
80. Files be consigned to registry.

V. /   
(V.K Goyal)  
Member

  
(DR. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 12.04.2022

**HARERA**  
GURUGRAM