

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

Order pronounced on: 27.05.2022

NAME OF THE BUILDER		BPTP Limited	
PROJECT NAME		Amstoria	APPEARANCE
1	CR/2150/2018	Vikas Mangla V/s M/s BPTP Limited and Countrywide Pvt. Ltd.	Sh. Bhupender Pratap Sh. Venket Rao
2	CR/5265/2019	Pradeep Loyal V/s M/s BPTP Limited and Countrywide Pvt. Ltd	Sh. Kamal Taneja Sh. Venket Rao
3	CR/2959/2020	Mrs. Sadhna Sahni & Mr. Chander Mohan V/s M/s BPTP Limited and Countrywide Pvt. Ltd	Sh. Apoorva jain Sh. Venket Rao
4	CR/630/2021	Sanjay Kumar Dabra Vs. M/s BPTP Limited and Countrywide Pvt. Ltd	Sh. Kuldeep Kohli Sh. Venket Rao

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

Chairman
Member

ORDER

1. This order shall dispose of all the four 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 allottee 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 project, namely, Amstoria developed by the same respondent-promoters i.e., BPTP Limited. 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 issues involved in all these cases pertains to failure on the part of the respondents/promoters 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 club membership charges and development charges etc.
3. The details of the complaints, reply status, unit no's., dates of agreements, environment clearance, sanction of building

plans, due dates of possession, offer of possession and relief sought are given in the tabular form below:

BPTP Limited								
Project Name:- Amstoria								
<p>(CR/2150-2018) Possession clause qua Plot: Subject to Clause 13 herein or any other circumstances not anticipated and beyond the contra of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of all instalments and the of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller Confirming Party, whether under this Agreement or Maintenance Agreement or otherwise, from time to time, the Seller/Confirming Party proposes t to hand over the possession of the Plot to the Purchaser) within period of 24 months from the date of sanctioning of the service plan of the entire colony or execution of Plot Buyer's Agreement, whichever is later The Purchaser(s) agrees and understands that subject to Clause 13 of this agreement, ie Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months as stated above, for applying and obtaining necessary approval in respect of the colony.</p> <p>(CR/ 5265-2019, CR/ 2959-2020 and CR/630-2021) Possession clause qua Floor: Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc from DTCF under the Act in respect of the entire colony.</p>								
Note:- Grace period is not allowed in all complaints.								
Sr. No	Complaint No./Title/ Date of filing	Reply status	Unit no.	Date of execution of builder buyer's agreement	Date of allotment letter	Due date of possession	Offer of possession	Relief sought
1	CR/2150/2018/ Vikas Maangla Vs. BPTP and anr. D.O. F 26.11.2019	Reply Received	C-373, amstoria (page no. 27 of complaint)	28.08.2011 [page no. 23 of complaint]	08.02.2011 [page no. 40 of reply]	30.06.2016 (Due date has been calculated from the date of	27.10.2017 TC- 1,02,76,88 5.21/- AP- Rs. 95,22,706. 71/- (vide statement	i. DPC ii. Possession and to execute sale deed. iii. Direct the respondent to reverse/refund club membership

						sanction of service plan which is 30.06.2014) (Page 9 of additional documents submitted by the respondent)*	of account on page no. 70 of complaint)	charges of Rs. 2,00,000/- (already paid) with interest. iv. Direct the respondent to charge extra monies collected towards development charges with interest.
2	"CR/5265/2019 Pradeep Loyal V/S BPTP Limited and anr DOF:- 09.11.2019	Reply Received	"A-158-FF First Floor (Independent Residential Floor) (Page 39 of complaint)"	20.03.2012 (Page no. 64 of complaint)	"18.01.2010 (Page no. 75 of reply)"	"19.09.2014 (Due date has been calculated from the date of sanction of building plan which is 19.09.2012)"	10.10.2019 (Page no. 145 of reply) T.C:- Rs.1,48,05,933.03/- A.P:- Rs.65,67,076.49/- [vide statement of account on page no. 147 of reply]"	"i. DPC ii. Possession iii. Disclose on affidavit a copy of license, a copy of necessary and statutory approvals and whether they have valid RERA registration certificate obtained from Hon'ble Authority. iv. Direct the respondents to refund the excess amount charged with interest by it towards EDC, IDC, Escalation, Etc. as wherever prayed in the complaint. v. Direct the respondent not to charge Holding charges."
3	"CR/2959/2020 Sadhana Sahni V/S BPTP Limited and anr. DOF:- 07.10.2020	Reply Received	"A-158-FF First Floor (Independent Residential Floor) (Page 39 of complaint)"	07.02.2014 (Page no. 30 of complaint)	"19.12.2011 (Page 26 of complaint)"	"07.02.2016 (Due date has been calculated from the date of execution	"07.02.2020 (Page no. 67 of complaint) T.C:- Rs.1,38,52,236.64/- A.P:- Rs.1,05,17,340.93/-	i. DPC ii. Restrain the respondent from charging interest towards the additional liability of GST of Rs. 3,77,444/- having accrued on the complainants

						on of agree- ment it being later as the date for sanctio- n of buildin- g plan is 19.09. 2012)*	(Vide statement of account on page no. 70 of complaint) *	which was imposed much after the due date as per the committed period in the FBA
4	*CR/630/2 021 Sanjay Kumar Dabral V/S BPTP LIMITED and anr DOF:- 03.02.2021	Reply Receiv- ed	*A-97- GF Groun- d Floor (indep- endent Reside- ntial Floor) (Page 92 of reply)*	*28.02.201 2 (Page no. 61 of compliant *)	18.11.2011 (Page no. 76 of reply)	*19.09. 2014 (Due date has been calcula- ted from the date of sanctio- n of buildin- g plan which is 19.09. 2012)*	*07.02.202 0 (Page no. 158 of reply) T.C:- Rs.1,96,88, 779.20/- A.P:- Rs.1,48,15, 627.14/- (Vide statement of account on page no. 168 of reply)*	*RELIEF SOUGHT:- i. DPC ii. Direct Respondent to refund club membership charges(Construct- ion yet to be started) and escalation charges iii. Direct the Respondent to take the opinion of HVAT Tax experts and communicate to the Complainants along with detailed justification thereof. iv. Direct the respondent not take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the Complainants up to the deemed date of offering the possession of the apartments. v. Direct the respondent to refund the amount collected towards STP charges of Rs. 2,74,888.35/- when the BBA did not carry any such condition. vi. order the respondent to prepare a plan for the completion of the club and demand money from the members in instalments as

								per the plan.*
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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 Limited and another on account of violation 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, 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 also 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 promoters/respondents 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 particular of lead case bearing complaint no. Cr/2150/2018 titled as Vikas Mangla Vs. BPTP Ltd and another are being taken into consideration for determining the right of delay possession charges, development charges, club membership charges and other charges in the form of any cess or taxes from the complainant/allottees.

A. Unit and project related details

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

CR/2150/2021

S. No.	Heads	Description
1.	Name of the project	'Amstoria', Sector 102 & 102A, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Project area	Cannot be ascertained
4.	DTCP license no. and validity status	58 of 2010 issued on 03.08.10 and valid upto 02.08.2025
5.	Name of the license holder	Shivanand Real Estate Pvt. Ltd.
6.	RERA registration number	Not registered

7.	Date of execution of plot buyer's agreement	23.08.2011 (annexure C-2 on page no. 23 of complaint)
8.	Unit no.	C-373 (annexure C-2 on page no. 27 of complaint)
9.	Unit area admeasuring	225 sq. Yard (annexure C-2 on page no. 27 of complaint)
10.	Total consideration (Basic sale price)	Rs. 1,02,76,885.21/- (vide statement of accounts of page no. 70 of complaint)
11.	Total amount paid by the complainant	Rs. 95,22,706.71/- (vide statement of accounts of page no. 70 of complaint)
12.	Due date of delivery of possession	30.06.2016 (Calculated from the date of sanction of service plan as it being later)
13.	Part completion certificate	03.10.2017 (vide project details received from planning branch of the authority)
14.	Offer of possession	27.10.2017 (annexure C-4 on page no. 68 of complaint)
15.	Grace utilization period	In the present case, the promoters are seeking a grace period of 180 days for applying and obtaining necessary approvals in respect of the colony. The period of 24 months from the date of sanction of the service plan expired on 30.06.2016. But there is no

	<p>material on record that during this period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the part completion certificate also, it was observed the promoter applied for the issuance of part CC only on 06.04.2017 when the period of 24 months had already expired. So, the promoter cannot claim the benefit of grace period of 180 days. Consequently, the learned authority has rightly determined the due date of possession. Therefore, the grace period is not allowed, and the due date of possession comes out to be 30.06.2016.</p>
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B. Facts of the complaint

The complainant has submitted as under: -

9. That the complainant booked a plot in the project BPTP Amstoria being developed by the respondents in sectors 102, & 102 A Gurgaon.
10. That the respondent No. 1 is a private limited company incorporated under the companies Act and is engaged in the business of real estate development. It is developing residential plotted colony in sector 102 Gurgaon under the name of BPTP amstoria, purportedly under license No 58 of 2010, while the respondent No 2 is the licensee in terms of

license No 58 of 2010 issued by the Department of Town & Country Planning, Haryana

11. That the respondent No. 1 took out advertisement in the newspapers sometime in September 2010 in respect of residential plots being launched by it in sector 102, Gurgaon, the name of the plotted development being BPTP Amstoria.
12. That on inquiry, the representatives of respondent No. 1 represented the complainant that the said development would be ready in 3 years from booking and would be world class in respect of construction and amenities including recreational facilities.
13. That the complainant herein, believing the representation of the respondent No. 1 to be true, and having no reason to believe otherwise, decided to book a plot, bearing number C-373, ad measuring 225 square yards for a total basic sale price of Rs. 86,06,250/- besides development charges Rs. 4400 per square yard, club membership charges-Rs. 2,00,000, IFMS@ Rs 400 per square yard, power backup installation charges @ Rs. 20,000 per KVA. The above said booking was made on 31.10.2010 by paying an amount of 10% of basic sale price amounting to Rs 8,60,000
14. That subsequent to the booking, the respondent No. 1 continued to raise demands without executing the builder buyer agreement and which was executed only 23.08.2011, months after booking.

15. That from the aforesaid, it is amply clear that the respondents took about 60% of consideration due under the agreement within 6 months of booking and before executing buyer agreement. This is clear violation of section 13 of RERA which enjoins the developer not to raise demand more than 10% of total consideration before signing builder buyer agreement.
16. That the said agreement, executed 10 months after booking was laden with one sided, unfair, and illegal clauses providing among other things the following :-
- i) **Earnest money** of 25% of the total consideration. Having already recovered 60% of the total consideration, a clause providing for 25% as earnest money is most unfair and intended to push the complainant into submitting to the unfair terms of the agreement.
 - ii) **Penal interest** at an exorbitant 18% interest compounded quarterly for delayed payments by the complainant whereas the compensation payable to the Complainant in case of delay was defined in terms of absolute rates per month that vary from Rs. 30 per square yard per month to Rs. 50 per square yard per month. This is a violation of section 2 (za) of RERA that provides for same interest being payable by the builder for delay in possession that it expects the buyers to pay in case of delays in payment
 - iii) **Club membership charges** amounting to Rs. 200000/- community buildings and recreational facilities are to be

built by the respondents Company at its own cost and the same cannot be recovered from the complainant or the other allottees. This is in line with the mandate of section 3(3)(a)(iv) of Haryana Development and Regulation of Urban Areas Act 1975, the LCIV and bilateral agreement between the respondent No. 2 company and Government of Haryana which lays down the conditions of the development license issued to the respondent No. 2 company, and also per the law laid down by the Hon'ble Supreme Court in DLF Limited v Manmohan Lowe & Others (2014) 12 SCC 231. The club membership charges are therefore, illegal and ought to be refunded to the Complainant. It is of important to note that 100% of the club membership charges were recovered as on 6.01.2012.

- iv) **Quantum of Development charges @ Rs. 4400 per square yard amounting to a total of Rs. 9.90,000** The development license in question being 58 of 2010 was granted in the year 2010. The HUDA vide memo No. HUDA.CCF.ACCTT-1-2010/44973, dated 23.11.2010, true copy annexed as annexure CS stipulated the development charges to be Rs. 64.64 lakhs per gross acre, which translates to Rs. 3,00,477.25/- for the 225 square yard plot. The respondent No. 1 however, charged Rs. 9,90,000/- as development charges for the plot. This entire amount stood demanded and recovered by the

respondent No. 1 as on 6.01.2012. This clearly shows that the respondent No. 1 collected many times over the money that it was obligated to deposit with the department of town & country planning towards development charges. The respondent No. 1 thus not only acted in gross violation of the provisions of the aryana development & regulation of urban areas act, 1975 and the rules framed thereunder, but also unjustly enriched itself at the expense of the complainant and other buyers. The excess charges collected by the respondent No. 1 is illegal and must accordingly be refunded to the complainant with interest. The monies collected towards development charges and the monies deposited with the department of town & country planning must be inquired into by this Hon'ble Authority

17. That the delay of 10 months by the respondents in signing the agreement and its unfair terms notwithstanding the complainant fulfilled his side of the bargain by making timely payments as and when demanded by the respondents. The respondents however, miserably failed to make an offer of possession in terms of clause 5.1 thereof i.e., within 24 months of the signing of the agreement e. by 23.08.2013. The respondents therefore, acted in violation of section 11 of RERA and are liable to pay interest at the prescribed rate to the

complainant for the period after 23.08.2013 till the date of payment.

18. That the respondent No. 2 issued a letter dated 23.05.2017 stating therein that the layout plan initially approved by the competent authority on 16.03.2011 being marginally revised for better management of traffic and to restrict entry of outsiders into the township, without changing the location or areas of the plot of the complainant or green areas or club.
19. That the respondents finally made an offer of possession vide letter dated 27.10.2017 i.e., a whopping 50 months after the due date. It is apparent on the face of the record that the respondents enjoyed the monies of the complainant to his detriment and unjustly enriched themselves at the cost of the complainant. The said offer of possession is a sham in that it provided only for a meagre Rs. 76,441/- as compensation for delay. It is also pertinent to note that the respondents have not handed over physical possession to the complainant till date
20. That the complainant registered his protest against the said offer of possession on various grounds including not allowing compensation for delay in terms of HRERA rules and non-completion of services vide his email dated 5.11.2017 addressed to the respondent No. 1 including its director. The respondents replied to that email on 9.11.2017. The complainant once again sent an email on 19.11.2017 disputing the demand raised in the offer of possession and reserving his right to seek remedy before the appropriate fora.

21. That the complainant vide email dated 23.01.2018 requested respondent No.1 to expedite the registration process for his plot. The respondent No. 1 vide emails dated 10.02.2018 and 10.03.2018 informed the complainant w.r.t. his case being worked out and that the registration would be scheduled shortly till date. However, the respondents neither have the completion certificate for the said plotted colony, nor the physical possession has been handed over and the registration done by the respondents in favour of the complainant, though they got signed an undertaking as a prerequisite for handing over of physical possession.

22. That in light of the above stated facts and circumstances, the complainant is eligible for payment of interest in terms of section 18 read with section 36, 37, and 38 of RERA. The said interest was payable with the offer of possession and ought to have been adjusted with the last demand issued with the offer of possession. The interest is therefore; payable until the date it is actually paid to the complainant.

C. Relief sought by the complainant:

- (i) Direct the respondents to handover the physical possession of apartment with prescribed amount of interest as per the agreement for delay in handing over of possession.
- (ii) Direct the respondents to reverse/refund club membership charges of Rs. 2,00,000/- with interest

calculated at the prescribed rate till the date of payment.

- (iii) Direct the respondents to refund the excess monies collected towards development charges with interest calculated at the prescribed rate till the date of payment.

23. On the date of hearing, the authority explained to the respondents/promoters 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 respondents.

The respondents have contested the complaint on the following grounds: -

24. That the complainant has approached this Hon'ble Authority for redressal of his 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 respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

In this regard, reference may be made to the following instances which establish concealment/suppression/misrepresentation on the part of the complainant:

- i) The complainant, after 7 years from the date of execution of the agreement between the parties has wrongly alleged that the terms of the plot buyer's agreement are one sided, unfair and illegal, whereas, at the time of signing the agreement, he executed the said agreement without any protest or demur and never raised any issue with regard to the terms of the agreement and therefore, such allegations at this belated stage are afterthought and therefore, cannot be entertained or adjudicated upon by Authority.
- ii) The complainant has concealed from this Authority that the complainant has taken physical vacant possession of the plot to his complete satisfaction and accordingly, has also executed Indemnity cum-Undertaking dated 02.12.2017 in this regard. Therefore, the complainant is barred to raise any allegation by way of this present complaint and so, the complaint warrants dismissal without any further adjudication.
- iii) That with regard to the club membership charges, the complainant has made misleading and frivolous allegations against the respondents by stating that they are recovering cost of construction from him and other allottees. However, it

is submitted that the respondents are not charging the cost of construction of the club from the complainants or any of the allottees of the project but are charging for membership of the club from him for the usage of the services of the club being built in the colony for all occupants/residents of the colony. It is further submitted that the said charges are in accordance with Clause-1.8 and Clause 2.3(c) of the duly executed agreement between the parties and wherein the complainant had signed and agreed to all the causes in totality without any protest or demur. It is therefore submitted that the complainant is estopped from making any allegations with regard to club membership charges as the same are frivolous, baseless and wholly misconceived.

- iv) That the complainant has made frivolous and baseless allegation with regard to development charges in order to mislead the Authority and to create prejudice against the respondents before this Hon'ble Authority. In this regard, it is submitted that right at the stage of booking, the respondents had levied the charge "Development Charges or DC" while clarifying that DC shall mean the amount charged by the company from the applicants towards the development work of the colony including providing water supply, drainage network for sewage, sullage, storm-water etc., necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical work, solid waste management and disposal, hospitals, stadium/sports complex, fire stations, grid sub-stations, etc, and such other developments which

shall be undertaken by the company in addition to works done by the Government of Haryana or through Haryana Urban Development Authority or any other local body or authority and includes all charges as may be levied by any authority including DTCP like external development charges (EDC), infrastructure development charges (IDC), internal development works or any other charges that may be levied or enhanced in future by any authority. The rate at which DC is charged is mentioned in the price list attached with the booking application and was agreed upon by the complainant.

25. In view of the said understanding and agreement between the parties, the demand towards DC was raised from the complainant vide demand letters dated 14.04.2011, 13.05.2011, 09.09.2011 and 22.12.2011 which accordingly stands paid by him willingly and voluntarily without any protest or demur, It is pertinent to state that development charges of Rs.9,90,000/- paid by the complainant are also reflected in the statement of account annexed with the Offer of possession letter sent to him. However, with ulterior motives, such baseless allegations have been levied at this belated stage. It is further submitted that the complainant has made payment of the said demand as per the agreed terms of the agreement without any protest or demur. Therefore, the question of objecting to the said demands at this stage, cannot and does not arise. It is further submitted that the complainant is estopped from raising such allegations at this belated stage.

26. That the respondents have issued offer of possession to the complainant way back on 27.10.2017 and have also paid compensation to the tune of Rs.76.441/- for delay in delivery of possession in terms of the duly executed plot buyer's agreement. It is further submitted that the complainant has also taken physical vacant possession of the plot to his complete satisfaction and has also executed Indemnity cum undertaking dated 02.12.2017 in this regard. However, in terms of the offer of possession, the complainant has failed to remit an amount of Rs.4,80,000/- towards stamp duty charges. In the light of the above, it is submitted that the present complaint filed by the complainant is a gross abuse of due procedure of law and therefore, warrants dismissal without any further adjudication.
27. The parties had agreed under the plot buyer's agreement (PBA) to attempt at amicably settling the matter and if the matter is not settled amicably to refer the matter for arbitration and the same was specifically agreed vide clause 31 of the said agreement. Admittedly, the complainant has raised present dispute but did not take any steps to invoke arbitration. Hence, he is in breach of the agreement between the parties. The allegations made require proper adjudication by tendering evidence, cross examination etc and therefore, cannot be adjudicated in summary proceedings.
28. 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.

29. 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 respondents in this project as well as in other projects developed by the respondents, so vide orders 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 given an option to file objections to that report if any. The complainant did not file any objection and the respondents/builders sought time to file the same but did not opt for the same despite time given in this regard.

E. Jurisdiction of the authority

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

F. I Territorial jurisdiction

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 complaint.

F. II Subject matter jurisdiction

30. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

31. 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 complainant at a later stage.

G. Findings on the objections raised by the respondents.

G.I Objection regarding untimely payments done by the complainant.

32. It has been contended that the complainant(s) has made default in making payments as a result thereof, the respondents had to issue various reminder letters. Clause 11.1 of the buyer's agreement provides that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

"11.1 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.'

33. At the outset, it is relevant to comment on the said clause of the agreement i.e., "11.1. TIME IS OF ESSENCE" wherein the payments to be made by the complainant 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 allottee that even a single default by the allottee 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 complainant(s) being in default in making timely payments, the respondents have not exercised their discretion to terminate the buyer's agreement.

H. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief(s):

- i. Direct the respondents to handover the physical possession of apartment with prescribed amount of interest as per the agreement for delay in handing over of possession.
- ii. Direct the respondents to reverse/refund club membership charges of Rs. 2,00,000/- with interest calculated at the prescribed rate till the date of payment.
- iii. Direct the respondents to refund the excess monies collected towards development charges with interest calculated at the prescribed rate till the date of payment.

G.I Delay Possession Charges

34. 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."

35. Clause 5 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 5- 5.1 Subject to Clause 13 herein or any other circumstances not anticipated and beyond the contra of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of all instalments and the of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or Maintenance Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Plot to the Purchaser (a) within period of 24 months from the date of sanctioning of the service plan of the entire colony or execution of Plot Buyer's Agreement, whichever is later The Purchaser(s) agrees and understands that subject to

Clause 13 of this agreement, ie Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months as stated above, for applying and obtaining necessary approval in respect of the colony.

36. 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 complainant 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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
37. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. 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 buyer 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 buyer/allottee in case of delay in possession of the unit.

38. **Admissibility of grace period:** The promoter proposed to hand over the possession of the said unit within period of 24 months from the date of execution of the buyer's agreement i.e 23.08.2011 or from the date of sanction of the service plans i.e. 30.06.2014 whichever is later. The execution of the buyer's agreement was done on 23.08.2011. The period of 24 months from the date of sanction of the service plan expired on 30.06.2016 being the later. So, the due date for handing over possession of the allotted unit comes to 30.06.2016. However, there is no material on record that during the period of 180 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the part completion certificate also, it was observed the promoters applied for the issuance of part CC only on 06.04.2017 when the period of 24 months had already expired. So, the promoters cannot claim the benefit of grace period of 180 days. Consequently, the authority has rightly determined the due date of possession.

Thus, the grace period is not allowed and the due date of possession comes out to be 30.06.2016.

39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) is 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 promoters, 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.

40. 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.
41. 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., 27.05.2022 is 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.

42. The definition of term 'interest' as defined under section 2(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;"

43. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.50% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.
44. The counsel for the complainant in **CR No.2150 of 2018** vehemently argued that it is unfair practice on the part of builder to have been demanded 95% of the payment even before sanction of service plans and even the builder admitted

(page 90 A Annexure -C7 of the complainant) that project got sanction letter in June 2014. The complainant (s) may seek compensation without prejudice to any other remedy if complainant considers that this is an unfair practice of the builder.

G-II Club Membership Charges

45. The complainant has contended that the club is not part of the common areas to be transferred to the RWA. It will be operated and managed by the respondents or third party on commercial basis. Hence, they should not be forced to pay for this facility as CMC and requested that the club membership be made optional. After deliberation, it was agreed upon that club membership would be optional. If an allottee opts out to avail this facility and later approaches the respondents for membership of the club, then he shall pay the membership charges as may be decided by the respondents and shall not invoke the terms of FBA's that limits CMC to INR 1,00,000/- In view of the consensus arrived, the club membership may be made optional. The respondents are directed to refund the CMC, if any request is received from the allottee in this regard with condition that he shall abide by the above proviso.

G-III Development charges

46. The respondents have contended that the complainant has agreed to pay development charges @Rs. 4,400 per sq. yd, which includes EDC/IDC in terms of the clause 2.3(a) read with

clause 1.15, 8.2 and 8.3 of the plot buyer agreement. Thus, the development Charges have been charged accordingly @ 4,400 x 225= Rs. 9,90,000/- (exclusive of taxes) and which were duly remitted by the complainant on 29.04.2011, 28.05.2011, 24.09.2011 and 06.01.2012 respectively without any demur or protest. Though this issue was also referred to the committee mentioned above by the authority but it was observed by it that the respondent company did not provide the calculation details of EDC/IDC despite continuance pursuance by the committee.

The version of complainant is that development licence for the project in question was granted in the year 2010 vide licence no. 58 of 2010. The Haryana Urban Development Authority(HUDA for short) vide its MEMO bearing no. HUDA.CCF.ACCTT-1-2010/44973 dated 23.11.2010 stipulated the development charges to be at Rs. 6.64 Lacs per gross acre coming to Rs. 3,00,477.25/- for 225 sq. yd. plot. But, respondent no. 1 charged a sum of Rs. 9,90,000/- as development charges for the allotted plot. Thus, it shows that the developer charged excessive development charges in proportionate to the charges levied by HUDA which are liable to be returned /refunded . But the plea advanced in this regard is devoid of merits. The clause 1.5 of the agreement to sell defines the term development charges i.e. the amount charged by the seller/confirming party from the purchaser(s) towards the payment of external development charges (EDC) and

infrastructure development charges (IDC) as presently charged by the HUDA, DTCP or the government of Haryana and cost of such other development works as may be undertaken by the seller/confirming party within the colony which are not charged specifically anywhere else. The final amount of development charge shall be determined up to on finalization of EDC by the government. No doubt, the respondents have charged Rs. 9,90,000/- as development charges from the complainant but the same are in consonance with the terms and conditions embodied in clauses 8.2 and 8.3 of the agreement executed between the parties and no objection to the same was raised at any time by the complainant except filing this complaint. It is not the case of complainant that the final amount of development charges has been determined by the govt. As earlier mentioned, clause 1.5 of the agreement entitles the builder to charge cost of such other development works as may be undertaken by it within the colony which were not charged specifically anywhere else. Thus, the plea of the complainant with regard to charge of excessive development charges stands rejected.

G-IV Holding Charges

47. The respondents are not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

G-V GST Charges/ VAT

48. 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 implantation 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
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ii. 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	Swachh Bharat Cess	Krishi Kalyan	Total Tax Rate	Abatement %	Effective Tax Rate
01 July 2010 to 31st March 2012	10%	2%	1%			10.30%		10.30%
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%

iii. Project Specific GST to be refunded:

Particulars	Amstoria
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 RateE= (D-C)	2.99%
Less: Anti-Profitteering benefit passed if any till March 2019 (F)	0.00%
Amount to be refunded Only if greater than (E-F) (G)	2.99%

G-VII Advance Maintenance Charges

49. The respondents are right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondents shall not demand the advance maintenance charges for more than a year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

G-VIII Cost Escalation

50. In reference to *complaints no. 5265 of 2019 titled as Pradeep Loyal V/s BPTP Limited* and *630 of 2021 titled as Sanjay Kumar Dabral V/s BPTP Limited*, the buyers agreement duly accepted and signed between the parties, the cost escalation is to be borne by the allottees. The committee while deliberating on this issue took into consideration the estimated cost of construction at the time of

booking/agreement, absorption of 5% inflation by the developer, measurement of cost inflation based on CPWD Index and inflation benefits to be provided for the period up to the date of actual offer of possession or up to the date of committed date of offer of possession. So, taking into consideration all these factors and a certificate of chartered accountant, the committee allowed escalation cost of Rs. 233.46 per square feet instead of Rs. 306.91 paisa as raised by the developer. The view taken by the committee in this regard is a reasonable one and the authority agrees to the same and allow the developer to charge cost of escalation of the allotted unit at Rs. 233.46 per square feet instead of Rs. 306.91 paisa from the allottees.

G-IX STP Charges

51. While issuing of offer of possession of the allotted unit in complaint no. 630-2021, the respondent-builders demanded a sum of Rs. 274888.35/- under the head electrification and STP charges. It is pleaded on behalf of complainants that they are not liable to pay that amount and demand for the same has been raised illegally. But the plea advanced in this regard is devoid of merit. While executing floor buyer agreement on 28.02.2012, the complainants under clause 2 of that document under the head 'Consideration and other Conditions' agreed to pay electrification charges not included in the total sale consideration and cost of construction/Erection of Sewerage Treatment Plant/Effluent Treatment Plant/ Pollution Control

Devices. Even these charges have been mentioned separately in annexure D under the heading Total Sale Consideration. Though no specific amount with regard to electrification and STP charges has been mentioned either in the FBA and the annexure D but details of the same have been given in statement of account annexure A (page 160 of the reply) attached with offer of possession dated 07.02.2020. Thus, the demand raised under these heads to the tune of Rs. 2,74,888.35/- cannot be said to be beyond the preview of FBA and the complainants are accordingly liable to pay the same to the respondents.

H. Directions of the authority

52. Hence, 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 respondents are directed to pay interest at the prescribed rate of 9.50% p.a. for every month of delay from the due date of possession till the date of offer of possession plus two months to the complainant(s) as per section 19(10) of the Act.
 - 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 respectively 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 against their units to be paid by the respondents.
- 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., 9.50% by the respondents/promoters 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 respondents 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. The holding charges shall not be recoverable from the allottees even being part of builder buyer agreement as per the directions of the Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).
- vi. 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 respondents/promoters were 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 47 of this order.

- vii. The promoter 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, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The respondents-promoters are bound to adjust the said amount, if charged from the allottees with the dues payable by them or refund the amount if no dues are payable by them.
- viii. The developer in case *bearing no. 5265-2019 and 630-2021* is allowed to charge **cost escalation** of the allotted units at Rs. 233.46 per square feet instead of Rs. 306.91 paisa from the allottees and is directed to work out the total cost of the allotted units and adjust accordingly.
- ix. The membership of the club is optional and the club is not part of common areas to be transferred to RWA. So, the club membership for the allottees of the project be made

optional and they should not be forced to pay for the same. However, if any allottee opts out to avail this facility, and approaches the respondents for membership then, he shall pay the charges as decided by the developer. The respondents are directed to refund the amount received under this head if any request in this regard from the allottees is received.

53. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

54. The complaints stand disposed off.

55. True certified copy of this order be placed in the case file of each matter. There shall be separate decrees in individual cases.

56. Files be consigned to registry.


(V.K Goyal)
Member


(Dr. K.K Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 27.05.2022