BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order pronounced on: 26.04.2022

NAME OF THE BUILDER		M/s BPTP Limited	
PROJECT NAME:		SPACIO	APPEARANCE
1	CR/3203/2020	Vijay Kumar Jadhav Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
2	CR/1845/2019	Pavan Datta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
3	CR/5602/2019	Tarun Tuli Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Nilotpal Shyam Sh. Venket Rao
4	CR/2671/2020	Mukesh Agarwal Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
5	CR/2772/2020	Nitin Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Daggar Malhotra Sh. Venket Rao
6	CR/2823/2020	Vivek Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
7	CR/2936/2020	Ila Vashista Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
8	CR/2949/2020	Deeksha Seethapathy Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
9	CR/3009/2020	Mrs. Shilpa Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
10	CR/3010/2020	Kirti Rathore Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao

11	CR/3012/2020	Ankita Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
12	CR/3013/2020	Vishal Rana Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
13	CR/3126/2020	Pawan Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
14	CR/3134/2020	Satyanarayan Panda Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
15	CR/3195/2020	Tishar Adesara Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
16	CR/3196/2020	Swati Virmani Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
17	CR/3199/2020	Vaibhav Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
18	CR/3337/2020	Saurabh Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
19	CR/3340/2020	Sushil Kumar Jain Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
20	CR/3346/2020	Deepa Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
21	CR/3350/2020	Badri Prashad Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
22	CR/3376/2020	Vikas Mehta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao

35	CR/3734/2020	Digvijay Singh Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
36	CR/3844/2020	Alok Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Joel Sh. Venket Rao
37	CR/3845/2020	Rakesh Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Joel Sh. Venket Rao
38	CR/3886/2020	Ranjeet Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
39	CR/3940/2020	Namrata Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
40	CR/4119/2020	Amit Arora Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
41	CR/4428/2020	Archana Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Joel Sh. Venket Rao
42	CR/6711/2019	Anjali Sachdeva Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Pawan Kumar Ray Sh. Venket Rao
43	CR/285/2020	Deepak Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Amit Jaglan Sh. Venket Rao
44	CR/291/2020	Brijesh Kumar Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Amit Jaglan Sh. Venket Rao
45	CR/623/2020	Pankaj Pandey and Swati Chandra Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Himanshu Suman Sh. Venket Rao

CORAM:
Dr. K.K. Khandelwal — Chairman
Shri Vijay Kumar Goyal — Member

23	CR/3377/2020	Vijay Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
24	CR/3378/2020	Sudesh Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
25	CR/3379/2020	Rajesh Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
26	CR/3380/2020	Deepak Luthra Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
27	CR/3381/2020	Ashish Midhha Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
28	CR/3382/2020	Indu Deshawar Sachdev Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
29	CR/3388/2020	Sudhanshu Singhal Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
30	CR/3389/2020	Shriya Chakraborty Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
31	CR/3394/2020	Ajay Chaturvedi Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
32	CR/3604/2020	Kiran Singh Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
33	CR/3605/2020	Hari Narayan Singh Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
34	CR/3670/2020	~~Narender~~ Narendra Kumar Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Daggar Malhotra Sh. Venket Rao

Corrected vide order dated 29.07.2022

02-08-2022

ORDER

1. This order shall dispose of all the 46 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, 'Spacio' being developed by the same respondents promoters i.e., M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd. 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 and 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 table below:

Project: SPACIO, Sector-37-D, Gurugram

Possession Clause (3.1): ...the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of **36 months from the date of booking/registration of Flat.** The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of **180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate** in respect of the Colony from the Authority.

Note: The grace period is not included while computing the due date of possession.

1	2	3	4	5	6	7	8	9
Sr. No	Complaint No./ Title/ Date of filing	Reply status	Unit no.	Date of booking	Date of agreement	Due date of possession	Offer of possession; total consideration and amount paid as per statement of account annexed with offer of possession	Relief sought
1	3203/2020 Vijay Kumar Jadhav Vs. M/s BPTP Limited and another 12.10.2020	Reply filed	N-1206 Floor 12th Tower-N (Page no. 39 of compl aint)	05.08.2010 (Vide receipt on page no. 22 of complaint)	23.03.2011 (FBA with original allottee on page no. 32 of complaint) SA- 04.09.2012	05.08.2013 [36 months from date of booking]	01.08.2020 (Vide possession letter on page no. 175 of reply) TC- Rs. 46,19,151 AP- Rs. 29,48,628	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. Quash the one-year advance maintenance charge v. Quash the increased super area vi. Quash the VAT charges and will pay by own vii. To direct the respondent to pay interest on maintenance security viii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.

2	1845/2019 Pavan Datta Vs. M/s BPTP Limited and another 30.04.2019	Reply filed	M-502 Floor 5th Tower-M (Page no. 25 of complaint)	02.12.2010 (Vide payment receipt)	25.03.2011 (Page no.16 of complaint) **SA-** 09.01.2013	02.12.2013 (36 months from the date of booking)	01.02.2021 (Page no. 8 of add. doc. submitted by the respondent) **TC-** Rs. 61,43,600 **AP-** Rs. 45,01,611	i. DPC ii. To direct the respondent to quash the one-sided clauses mentioned in FBA.
3	5602/2019 Tarun Tuli Vs M/s BPTP Limited and another 14.11.2019	Reply filed	L-302 Floor 3rd Tower-L (Page no.26 of complaint)	04.05.2011 (Vide payment receipt on page no. 48 of reply)	21.07.2011 (Page no.19 of complaint)	04.05.2014 (36 months from the date of booking)	14.08.2020 (Vide letter of possession, page 139 of reply) **TC-** Rs. 92,46,567 **AP-** Rs. 72,88,300	i. DPC ii. Possession
4	2671/2020 Mukesh Agarwal Vs. M/s BPTP Limited and another 05.10.2020	Reply filed	L-1706 Floor 17th Tower-L (Page no. 32 of complaint)	21.07.2010 (Vide payment receipt on page no. 21 of complaint)	16.09.2011 (Page no. 27 of complaint)	21.07.2013 (36 months from the date of booking)	31.07.2020 (Vide offer of possession on page no. 63 of complaint) **TC-** Rs. 44,26,611 **AP-** Rs. 32,67,906	i. DPC and possession ii. To direct the respondent to quash the escalation cost iii. To direct the respondent to quash the one-year advance maintenance charge iv. To direct the respondent to quash the increased super area v. To direct the respondent to quash the VAT charges vi. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
5	2772/2020 Nitin Kumar Vs. M/s BPTP Limited and another 21.10.2020	Reply filed	N-401 Floor 4th Tower-N (Page no. 23 of complaint)	16.08.2010 (Vide payment receipt on page no. 53 of reply)	28.03.2011 (FBA is with original allottee is on page no. 19 of complaint) **SA-** 12.03.2013	16.08.2013 (36 months from the date of booking)	11.08.2020 **TC-** Rs. 45,52,457 **AP-** Rs. 32,40,392	i. DPC and possession ii. To withdraw its unlawful demands of electrification and STP charges and firefighting and power backup charges iii. To pass on to the buyer the credit they receive against the taxes so paid on purchase of such inputs under GST regime iv. To withdraw unfair claim of service tax and other unfair demands as mentioned in BBA including escalation costs

6	2823/2020 Vivek Kumar Agarwal Vs. M/s BPTP Limited and another 05.10.2020	Reply filed	L-1402 Floor 14th Tower-L (Page no. 38 of complaint)	30.11.2010 (Vide receipt on page no. 21 of complaint)	25.03.2011 (Page no. 31 of complaint) **SA-** 20.10.2018	30.11.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 186 of reply) **TC-** Rs. 78,85,092 **AP-** Rs. 60,17,568	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
7	2936/2020 Ila Vashishta through Sh. Ravinder Nathn Vashishta Vs. M/S BPTP Limited and another 08.10.2020	Reply filed	K-G006, ground Floor, tower K (Page No. 44 of complaint)	11.01.2011 (Receipt on page no. 72 of complaint)	24.12.2012 (pg. no.34 of complaint)	24.12.2015 (Calculated from the date of execution of the FBA)	04.08.2020 (Vide offer of possession on page no. 170 of reply) **TC-** Rs. 59,96,745 **AP-** Rs. 44,23,954	i. DPC ii. Furnish proof of increase of construction cost. iii. Levy GST Charges iv. Exclude club membership Charges v. Fresh offer of possession vi. Quash escalation cost vii. Quash service tax and electrification charges
8	2949/2020 Deeksha Seethapathy Vs. M/s BPTP Limited and another 08.10.2020	Reply filed	M-906 9th Floor Tower-M (Page no. 25 of complaint)	03.07.2010 (Vide receipt on page no. 59 of reply)	04.02.2011 (Page no. 24 of complaint)	03.07.2013 (36 months from the date of booking)	01.02.2021 (Vide offer of possession letter on page no. 178 of reply) **TC-** Rs. 52,82,427 **AP-** Rs. 38,58,237	i. DPC ii. Possession iii. To direct the respondent to charge service tax on the complainants till 03.01.2014 i.e. the date of completion of the unit of the complainants at the time of raising final demand. iv. To direct the respondent not to charge GST charges from complainants at the time of raising final demand in lieu of judgement passed by Panchkula Authority in ""Madhu Sareen vs BPTP"

9	3009/2020 Shilpa Vs. M/s BPTP Limited and another 07.10.2020	Reply filed	L-701 Floor 7th Tower-L (Page no. 32 of complaint)	25.06.2010 (Vide receipt on page no. 21 of complaint)	05.02.2011 (FBA is with original allottee page no. 24 of complaint) **SA-** 06.06.2020	25.06.2013 (36 months from the date of booking)	11.08.2020 (Vide offer of possession on page no. 154 of reply **TC-** Rs. 40,51,348 **AP-** Rs. 29,26,501	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
10	3010/2020 Kirti Rathore Vs. M/s BPTP Limited and another 07.10.2020	Reply filed	L-1904, 19th Floor, Tower-L (Page No. 34 of complaint)	15.07.2010 (Vide receipt on page no. 22 of complaint)	05.09.2014 (Page no. 134 of reply) **SA-** 27.03.2014	15.07.2013 (As per the possession clause of the FBA executed b/w the original allottee and the respondent i.e. 36 months from date of booking)	05.08.2020 (Vide offer of possession on page no. 202 of reply) **TC-** Rs. 55,06,598 **AP-** Rs. 41,40,141	i. DPC ii. Quash one-year advance maintenance charges iii. Quash increase in super area of flat. iv. Quash the VAT charges v. Pay interest on maintenance security.
11	3012/2020 Ankita Sharma Vs. M/s BPTP Limited and another 07.10.2020	Reply filed	L-504 Floor 5th Tower-L (Page no. 32 of complaint)	25.06.2010 (Vide receipt in the name of original allottee on page no. 60 of complaint)	15.02.2011 (FBA is with original allottee on page no. 24 of complaint) **SA-** 09.02.2018	25.06.2013 (36 months from the date of booking)	11.08.2020 (Vide offer of possession on page no. 148 of reply) **TC-** Rs. 50,38,644 **AP-** Rs. 37,06,905	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.

69

12	3013/2020 Vishal Rana Vs. M/s BPTP Limited and another 07.10.2020	Reply filed	L-1204 Floor 12th Tower L (Page no. 32 of compl aint)	16.07.2010 (Vide receipt on page no. 21 of complaint)	17.02.2011 (Page no. 23 of complaint)	16.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 62 of complaint) **TC-** Rs. 54,79,974 **AP-** Rs. 41,06,886	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
13	3126/2020 Pawan Kumar Vs. M/s BPTP Limited and another 29.10.2020	Reply filed	N-1706 17th Floor Tower N (Page No. 47 of compl aint)	13.08.2010 (Vide receipt on page no. 36 of complaint)	29.01.2018 (Page no. 42 of complaint) **SA-** 20.04.2017	13.08.2015 (Vide clause 2.8 of BBA within 60 months from date of booking of the unit)	20.08.2020 (Vide offer of possession on page no. 71 of complaint) **TC-** Rs. 45,15,854 **AP-** Rs. 32,08,065	i. DPC ii. Possession iii. To provide super area calculation iv. To rescind offer of possession v. To restrain from charging club charges, electrification & STP charges, firefighting, and power backup charges, holding charges, admin charges, maintenance charges vi. To refrain from giving effect to unfair clauses of BBA vii. To direct the respondent to provide for third party audit to measure super area and built-up area.
14	3134/2020 Satyanaray an Panda Vs. M/s BPTP Limited and another 09.10.2020	Reply filed	N-801 Floor 8th Tower-N (Page no.33 of compl aint)	01.09.2010 (Vide receipt on page no.21 of complaint)	29.03.2011 (Page no.25 of complaint)	01.09.2013 (36 months from the date of booking)	11.08.2020 (Vide possession letter on page no. 65 of complaint) **TC-** Rs. 46,96,718 **AP-** Rs. 33,71,177	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

15	3195/2020 Tushar Adesara Vs. M/s BPTP Limited and another 12.10.2020	Reply filed	N-206 Floor 2nd Tower-N (Page no. 34 of compl aint)	10.09.2010 (Date of allotment vide application for allotment on page no. 58 of reply)	25.03.2011 (FBA with original allottee on page no. 25 of complaint) SA- 12.03.2012	10.09.2013 (36 months from the date of booking)	01.08.2020 (Vide possession letter on page no. 173 of reply) TC- Rs. 47,92,389 AP- Rs. 34,66,773	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges and will pay by own vii. To direct the respondent to pay interest on maintenance security viii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
16	3196/2020 Swati Virmani Vs. M/s BPTP Limited and another 09.10.2020	Reply filed	K-706 Floor 7th Tower-K (Page no. 36 of the compl aint)	25.06.2010 (Vide receipt on page no. 22 of the complaint)	17.02.2011 (Page no. 31 of the complaint) SA- 12.05.2014	25.06.2013 (36 months from the date of booking)	01.08.2020 (Vide possession letter on page no. 66 of the complaint) TC- Rs. 48,20,791/- AP- Rs. 34,38,295/-	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
17	3199/2020 Vaibhav Gupta Vs. M/s BPTP Limited and another 09.10.2020	Reply filed	N-904 Floor 9th Tower-N (Page no.33 of compl aint)	16.08.2010 (Vide receipt on page no.21 of complaint)	29.03.2013 (Page no.28 of complaint)	16.08.2013 (36 months from the date of booking)	04.08.2020 (Vide possession letter on page no.60 of complaint) TC- Rs. 39,85,586 AP- Rs. 55,25,627	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

68

18	3337/2020 Saurabh Gupta Vs. M/s BPTP Limited and another 13.10.2020	Reply filed	N-602 Floor 6th Tower-N (Page no. 34 of compl aint)	27.12.2011 (Vide receipt on page no. 22 of complaint)	09.04.2012 (Page no. 25 of complaint)	21.09.2015 (Calculated from the date of sanction of building plan)	01.08.2020 (Vide letter of possession on page no. 113 of complaint) **TC-** Rs. 1,03,64,831 **AP-** Rs. 80,73,081	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
19	3340/2020 Sushil Kumar Jain Vs. M/s BPTP Limited and another 13.10.2020	Reply filed	N-502 Floor 5th Tower-N (Page no. 33 of compl aint)	24.11.2010 (Vide receipt on page no. 21 of complaint)	28.03.2011 (Page no. 25 of complaint)	24.11.2013 (36 months from the date of booking)	01.08.2020 (Page no. 83 of complaint) **TC-** Rs. 78,54,437 **AP-** Rs. 57,82,420	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
20	3346/2020 Deepak Gupta and Ruchika Gupta Vs. M/s BPTP Limited and another 14.10.2020	Reply filed	N-1205 Floor 12th Tower-N (Page no. 35 of compl aint)	19.01.2011 (Vide receipt on page no. 21 of complaint)	18.05.2011 (Page no. 27 of complaint)	19.01.2014 (36 months from the date of booking)	04.08.2020 (Vide offer of possession on page no. 177 of reply) **TC-** Rs. 81,56,304 **AP-** Rs. 60,51,892	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

21	3350/2020 Badri Prasad Gupta Vs. M/s BPTP Limited and another 13.10.2020	Reply filed	L-1601 Floor 16th Tower-L (Page no. 34 of compl aint)	19.01.2011 (Vide receipt in the name of original allottee on page no. 21 of complaint)	05.02.2011 (Page no. 25 of complaint) SA- 01.06.2012	19.01.2014 (36 months from the date of booking)	31.07.2020 (Vide offer of possession letter on page no. 65 of complaint) TC- Rs. 44,26,249 AP- Rs. 32,67,543	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
22	3376/2020 Vikas Mehta Vs. M/s BPTP Limited and another 13.10.2020	Reply filed	K-1904 Floor 19th Tower-K (Page no. 35 of compl aint)	16.07.2010 (Vide receipt in name of original allottee is on page no. 22 of complaint)	14.02.2011 (EBA is with original allottee on page no. 30 of complaint) SA- 23.04.2013	16.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 179 of reply) TC- Rs. 45,37,974 AP- Rs. 32,75,786	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
23	3377/2020 Vijay Kumar Vs. M/s BPTP Limited and another 13.10.2020	Reply filed	K-1201 Floor 12th Tower-K (Page no. 34 of compl aint)	03.07.2010 (Vide payment receipt on page no. 63 of reply)	05.02.2011 (Page no. 25 of complaint)	03.07.2013 (36 months from the date of booking)	01.08.2020 (Vide letter of possession on page no. 155 of reply) TC- Rs. 48,49,337 AP- Rs. 34,66,843	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. Quash the one-year advance maintenance charge v. Quash the increased super area vi. Quash the VAT charges and will pay by own vii. To direct the respondent to pay interest on maintenance security viii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

67

24	3378/2020 Sudesh Gupta and Ritu Gupta Vs. M/s BPTP Limited and another 14.10.2020	Reply filed	N-1102 Floor 11th Tower-N (Page no. 35 of complaint)	13.01.2011 (Vide receipt on page no. 21 of complaint)	18.08.2011 (Page no. 27 of complaint)	13.01.2014 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 62 of complaint) **TC-** Rs. 81,03,793 **AP-** Rs. 60,19,184	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.
25	3379/2020 Rajesh Kumar and Soni Kumari Vs. M/s BPTP Limited and another 16.10.2020	Reply filed	K-1906 Floor 19th Tower-K (Page no. 42 of complaint)	22.07.2010 (Vide payment receipt on page no. 48 of reply)	30.03.2011 (Page no. 33 of complaint)	22.07.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 138 of reply) **TC-** Rs. 52,11,534 **AP-** Rs. 39,71,304	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
26	3380/2020 Deepak Luthra Vs. M/s BPTP Limited and another 16.10.2020	Reply filed	K-1202 Floor 12th Tower-K (Page no. 33 of complaint)	24.08.2010 (Vide receipt on page no. 21 of complaint)	16.03.2011 (Page no. 24 of complaint)	24.08.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 63 of complaint) **TC-** Rs. 79,19,968 **AP-** Rs. 58,48,809	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

27	3381/2020 Ashish Midhha Vs. M/s BPTP Limited and another 22.10.2020	Reply filed	L-102, 1st floor, Tower-L (Page no. 32 of complaint)	13.08.2010 (Vide payment receipt on page no. 80 of reply)*	17.03.2011 (Page no. 27 of complaint)	13.08.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 205 of reply) **TC-** Rs. 79,46,364 **AP-** Rs. 60,91,573	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
28	3382/2020 Indu Deshawar Sachdev Vs. M/s BPTP Limited and another 16.10.2020	Reply filed	L-904 9th floor Tower-L (Page no. 34 of complaint)	01.07.2010 (Vide receipt on page no. 21 of complaint)	17.02.2011 (Page no. 25 of complaint)	01.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 62 of complaint) **TC-** Rs. 50,90,739 **AP-** Rs. 37,67,508	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
29	3388/2020 Sudhanshu Singal Vs. M/s BPTP Limited and another 15.10.2020	Reply filed	L-1704 Floor 17th Tower-L (Page no. 28 of complaint)	15.07.2010 (Vide receipt on page no. 21 of complaint)	05.02.2011 (Page no. 24 of complaint)	15.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession page no. 191 of reply) **TC-** Rs. 55,98,475 **AP-** Rs. 42,23,602	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

66

30	3389/2020 Shriya Chakrborty Vs. M/s BPTP Limited and another 15.10.2020	Reply filed	N-1804 Floor 18th Tower-N (Page no. 33 of complaint)	02.12.2010 (Vide receipt on page no. 21 of complaint)	25.03.2011 (Page no. 28 of complaint) SA-04.06.2012	02.12.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 75 of complaint) **TC-** Rs. 59,44,769 **AP-** Rs. 43,62,319	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
31	3394/2020 Ajay Chaturvedi Vs. M/s BPTP Limited and another 15.10.2020	Reply filed	P-1504 Floor 15th Tower-P (Page no. 32 of complaint)	09.09.2010 (Vide payment receipt page no. 54 of reply)	31.03.2011 (Page no. 23 of complaint)	09.09.2013 (36 months from the date of booking)	01.02.2021 **TC-** Rs. 43,12,250 **AP-** Rs. 42,18,399	i. DPC ii. Possession iii. To direct the respondent to quash one sided clauses of BBA including escalation cost clause iv. To pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder
32	3604/2020 Kiran Singh Vs. M/s BPTP Limited and another 21.10.2020	Reply filed	L-101 Floor 1st Tower-L (Page no. 33 of complaint)	02.07.2010 (Vide receipt on page no. 23 of complaint)	10.02.2011 (Page no. 29 of complaint)	02.07.2013 (36 months from the date of booking)	20.08.2020 (Vide offer of possession on page no. 142 of reply) **TC-** Rs. 41,72,028 **AP-** Rs. 30,44,950	i. DPC ii. Possession iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to quash the one-year advance maintenance charge v. To direct the respondent to quash the increased super area vi. To direct the respondent to quash the VAT charges vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

33	3605/2020 Hari Narayan Singh Vs. M/s BPTP Limited and another 29.10.2020	Reply filed	N-106 1st Floor Tower-N (Page No. 32 of complaint)	07.09.2010 (Vide payment receipt on page no. 59 of reply)"	22.03.2011 (Page no. 27 of complaint)	07.09.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 62 of complaint) **TC-** Rs. 47,74,600 **AP-** Rs. 34,19,518	i. ii. iii. iv.	Possession To pass an order for delay interest on paid amount of Rs. 3419518/- from 20th august 2013 along with pendent lite. To direct the respondent to quash the one-year advance maintenance charges of Rs. 45835.92/- To direct the respondent to quash the increased in super area of flat as carpet area remain same as previous, to quash the VAT charges, to pass an order for payment of GST amount levied on complainant.
34	3670/2020 Narendra ~~Narender~~ Kumar Sharma Vs. M/s BPTP Limited and another 26.10.2020	Reply filed	N-1106 Floor 11th Tower-N (Page no. 25 of complaint)	05.08.2010 (Vide receipt on page no. 44 of reply)	18.03.2011 (Page no. 16 of complaint)	05.08.2013 (36 months from the date of booking)	04.08.2020 (Vide offer of possession on page no. 74 of complaint) **TC-** Rs. 45,16,807 **AP-** Rs. 32,09,738	i. ii. iii. iv. v.	DPC Possession To withdraw its unlawful demands of electrification and STP charges and firefighting and power backup charges To direct the respondent to pass on to the buyer the credit they receive against the taxes so paid on the purchase of such inputs under GST regime To remove wrongly computed escalation costs and unfair car parking charges
35	3734/2020 Digvijay Singh Vs. BPTP Limited and another 27.10.2020	Reply filed	N-101 Floor 1st Tower-N (Page no. 30 of complaint)	12.07.2010 (Vide receipt on page no. 21 of complaint)	31.01.2011 (Page no. 25 of complaint)	12.07.2013 (36 months from the date booking)	01.08.2020 (Vide offer of possession on page no. 46 of complaint) TC-44,56,252 AP-32,26,223	i. ii. iii. iv. v. vi. vii.	DPC Possession To direct the respondent to quash the escalation cost To direct the respondent to quash the one-year advance maintenance charge To direct the respondent to quash the increased super area To direct the respondent to quash the VAT charges To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder"

Corrected vide order dated 29.07.2022
Eo.
2.8.2022

65

36	3844/2020 Alok Kumar Vs. M/s BPTP Limited and another 29.10.2020	Reply filed	L-206 2nd Floor Tower L (Page no. 41 of complaint)	25.06.2010 (Vide payment receipt on page no. 48 of reply)	04.02.2011 (Page no. 34 of complaint)	25.03.2010 (36 months from the date of booking)	31.07.2020 (Vide offer of possession on page no. 133 of reply) **TC-** Rs. 41,68,668 **AP-** Rs. 36,44,656	i. DPC ii. Possession iii. Direct the respondent to cancel all illegal demands like escalation cost, electrification and STP charges, Super area charges.
37	3845/2020 Rakesh Kumar Vs. M/s BPTP Limited and another 29.10.2020	Reply filed	N-306 3rd Floor Tower N (Page no. 157 of reply)	16.08.2010 (Vide payment receipt on page no. 71 of reply)	15.09.2014 (Page no. 151 of reply) **SA-** 30.04.2014	16.08.2013 (As per the possession clause of the FBA executed b/w the original allottee and the respondent i.e. 36 months from date of booking)	01.08.2020 (Vide offer of possession on page no. 226 of reply) **TC-** Rs. 45,52,417 **AP-** Rs. 32,40,392	i. DPC ii. Possession iii. Direct the respondent to cancel all illegal demands like escalation cost, electrification and STP charges, Super area charges.
38	3886/2020 Ranjeet Sharma Vs. M/s BPTP Limited and another 03.11.2020	Reply filed	K-304 Floor 3rd Tower-K (Page no. 28 of complaint)	25.06.2010 (Vide receipt on page no. 71 of reply)	17.03.2011 (Page no. 24 of complaint)	25.06.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 51 of complaint) **TC-** Rs. 43,06,379 **AP-** Rs. 31,86,747	i. DPC ii. To direct the respondent to quash the escalation cost of Rs. 634452/-, super area of flat, vat charges. iii. To pass an Order for payment of GST amount levied upon the complainant. iv. Quash one-year advance maintenance charges v. Quash VAT charges
39	3940/2020 Namrata Sharma Vs. M/s BPTP Limited and another 02.11.2020	Reply filed	K-2006 2nd floor Tower-K (Page no. 27 of complaint)	09.07.2010 (Vide receipt on page no. 54 of reply)	04.02.2011 (Page no. 26 of complaint)	09.07.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 134 of reply) **TC-** Rs. 52,85,768 **AP-** Rs. 38,52,314	i. Possession ii. DPC iii. To direct the respondent not to charge any Escalation charges from complainant at the time handing over the possession of the flat.

40	4119/2020 Amit Arora Vs. M/s BPTP Limited and another 20.11.2020	Reply filed	P-1002 Floor 10th Tower-P (Page no. 30 of complaint)	10.01.2011 (Vide receipt page no. 59 of complaint)	06.06.2011 (Page no. 25 of complaint)	10.01.2014 (36 months from the date of booking)	01.02.2021 (Pg no. 5 of additional doc. filed by comp.) **TC-** Rs. 52,85,768 **AP-** Rs. 38,52,314	i. DPC ii. Possession iii. To direct the respondents not to charge holding charges till the actual offer of possession. iv. To direct the respondent not to charge development charges, car parking charges, electrification and STP charges, interest on delayed payment, club membership charges, fire-fighting charges and power backup charges, additional charges for service tax, GST, VAT
41	4428/2020 Archana and Champa Malik Vs. M/s BPTP Limited and another 04.12.2020	Reply filed	L-1901, 19th floor, tower-L (Annexure R-4 on page no. 64 of reply)	24.06.2010 (Vide payment receipt on page no. 50 of reply)	04.02.2011 (Annexure R-4 on page no. 59 of reply) **SA-** 22.09.2012	24.06.2013 (36 months from the date of booking)	01.08.2020 (Annexure R-14 on page no. 129 of reply) **TC-** Rs. 33,42,476 **AP-** Rs. 31,87,866	i. DPC
42	6711/2019 Anjali Sachdeva Vs. M/s BPTP Ltd. and another 26.12.2019	Reply filed	Q-1705 Floor 17th Tower-Q (Page no. 40 of complaint)	30.12.2010 (Vide payment receipt on page no. 64 of reply)	03.10.2012 (Page no. 38 of complaint)	03.10.2015 (Calculated from the date of execution of FBA)	01.02.2021 **TC-** Rs. 60,14,000 **AP-** Rs. 57,66,364	i. DPC ii. Possession iii. To direct the respondent to adjust Rs.2,80,000/- taken from the complainant as parking charges
43	285/2020 Deepak Sharma Vs. M/s BPTP Limited and another 03.02.2020	Reply filed	Q-1604 Floor 16th Tower-Q (Page no. 21 of complaint)	31.08.2010 (Page no. 46 of complaint)	04.04.2011 (Page no. 18 of complaint)	31.08.2013 (36 months from the date of booking)	01.02.2021 **TC-** Rs. 42,80,400 **AP-** Rs. 40,22,353	i. DPC ii. Possession iii. To direct the respondent not to charge any escalation charges at the time of handing over possession

64

44	291/2020 Brijesh Kumar Sharma Vs. M/s BPTP Limited and another 03.02.2020	Reply filed	N-G001 Ground Floor Tower-N (Page no. 30 of compl aint)	17.02.2012 (Date of allotment vide allotment letter with original allottee on page no. 25 of reply))	13.10.2014 (FBA with complainant i.e. second allottee on page no. 28 of complaint) SA-15.02.2014	17.02.2015 (36 months from the date of booking)	14.08.2020 (Page no. 8 of reply) TC- Rs. 63,28,043 AP- Rs. 47,66,433	i. DPC ii. Possession iii. To direct the respondent not to charge any escalation charges at the time of handing over possession
45	623/2020 Pankaj Pandey Vs. M/s BPTP Limited and another 04.03.2020	Reply filed	K-906 Floor 9th Tower-K (Page no. 55 of compl aint)	01.07.2010 (Vide receipt on page no. 42 of complaint)	04.03.2011 (Page no. 50 of complaint)	01.07.2013 (36 months from the date of booking)	26.08.2020 (Page 138 of reply) TC- Rs. 53,14,864 AP- Rs. 23,38,971	i. DPC ii. Possession iii. To direct the respondent to only make demands as per the agreed construction linked payment plan provided with FBA

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DPC	Delayed possession charges
SA	Subsequent allottee
TC	Total consideration
AP	Amount paid by the allottee(s)
FBA	Flat buyer's agreement

4. The aforesaid complaints were filed by the complainants against the promoter 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. 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 particular's of lead case CR/3203/2020 titled as Mr. Vijay Kumar Yadav Vs. M/s BPTP Limited and anr. are being taken into consideration for determining the rights of the allottees qua delay possession charges, increase in super area, cost escalation, STP charges, taxes viz GST and VAT etc, advance maintenance charges, holding charges and PLC.

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/3203/2020

S. No.	Heads	Description
1.	Name of the project	'Spacio', Sector 37D, Gurugram, Haryana
2.	Project area	43.588 acres

63

3.	DTCP license no.	83 of 2008 issued on 05.04.2008	94 of 2011 issued on 24.10.2011
	Validity of license	04.04.2025	23.10.2019
	Name of the license holder of 83 of 2008	M/s Super Belts and 4 others	M/s Countrywide Promoters Pvt. Ltd. and 11 others
	Licensed area	23.814 acres	19.744 acres
4.	RERA registration number	300 of 2017 dated 13.10.2017	
	Validity of registration certificate	w.e.f. 13.10.2017 till 12.10.2020	
5.	Date of execution of flat buyer's agreement	23.03.2013 (on page no. 34 of complaint)	
6.	Date of Booking by original allottee	05.08.2010 (vide payment receipt on page no. 59 of reply	
7.	Subsequent allottee	07.01.2012 (annexure R-7 on page no. 110 of reply)	
8.	Unit no.	1206, 12th floor, tower-N (annexure R-6 on page no. 68 of reply)	
9.	Unit area admeasuring	1000 sq. ft. (on page no. 35 of complaint)	
10.	Revised unit area	1079 sq. ft. (a on page no. 175 of reply)	
11.	Total consideration (Basic sale price)	Rs 46,19,151.00/- (annexure R-21 on page no. 177 of reply)	
12.	Total amount paid by the complainant	Rs 29,48,628.49/- (annexure R-21 on page no. 177 of reply)	
13.	Due date of delivery of possession as per clause 3.1 of	05.08.2013	

	the flat buyer's agreement i.e. within a period of **36 months from the date of booking/registration of flat** and the promoter has claimed **grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate** in respect of the colony from the authority.	**Note:** Grace period is not included
14.	Occupation certificate date	30.07.2020 (annexure R-20 on page no. 172 of reply)
15.	Offer of possession	01.08.2020 (annexure R-21 on page no. 175 of reply)

B. Facts of the complaint

The complainant has submitted as under:

9. That the complainant is law abiding consumer who has been cheated by the malpractices adopted by the respondents stated to be and are allegedly carrying out real estate development. Since many years, the complainant being interested in the project because it was a housing project and he needed to own home for his 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. That the complainant was subjected to unethical trade practice as well as subject of harassment, flat buyer agreements, clause of escalation cost,

62

many hidden charges which were forcedly imposed on buyers at the time of possession as tactics and practice used by builder in guise of a biased, arbitrary and discriminatory agreement.

11. That the original allottee approached the respondents for booking of a flat admeasuring 1000 sq. ft. in project namely Spacio, Sector-37 D, Gurugram and paid booking amount of Rs 2,44,925/- dated 05/08/2010.He was allotted flat bearing no. N -1206 admeasuring 1000sq. ft. 2 BHK in said project vide letter dated 23.11.2010.

12. That the respondents to dupe the original buyer in its nefarious net even executed buyer's agreement signed between him and M/s BPTP Limited on23.03.2011, 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 they were able to extract huge amount of money. The respondents 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. 34,35,470/- exclusive of taxes and out of this, a sum of Rs. 29,48,629.50/- was paid by the by the complainant in time bound manner.

13. That the original allottee namely Jatinder Beniwal agreed to transfer the allotted unit in favour of the complainant and an endorsement in this regard was made in his favour by the respondents on 07.01.2012 on the basis of letters dated 24.11.2011 and 21.12.2011 respectively. An addendum dated 01.07.2013 to FBA was also executed between the parties.

14. That it is pertinent to mention here that according to the statement of account, the complainants paid a sum of Rs. 29,48,629.50/- i.e., 85% of the total sale consideration in a time bound manner to the respondents till date and paid amount as demanded by them without doing appropriate work on the said project, which is illegal and arbitrary.
15. That respondents were liable to hand over the possession of the said unit before 05.08.2013 as per flat buyer's agreement clause no 3.1 but builder offered the possession of flat on 01.08.2020 but not in habitable condition.
16. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act), the complainant has fulfilled his responsibilities in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, he herein is not in breach of any of its terms of the agreement.
17. That complainant has paid all the instalments timely and deposited Rs. 29,48,629.50/-. However, the respondents in an endeavor to extract money from allottees devised a payment plan under which it linked more than 15 % amount of total paid against as an advance and rest of 80 % amount was 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 respondents have not bothered to any development on the project.

61

18. That the executed FBA is one sided and at the time offer of possession the builder used new trick for extracting extra money from complainant and forcibly imposed escalation cost of Rs 6,34,452/- and wrongly justified it. It is understandable that the complainant booked the flat in 2010, to be delivered by 2013 (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 respondents, complainant is not responsible. When we see inflation index of past 18 years 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.
19. That the complainant invested his all-life savings and despite making regular payments as per the payment plan, the respondents demanded more money than due from him as per buyer agreement. Due to the conduct of respondents, the complainant has 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.
20. That the respondents have charged compounded interest @ 18% on delayed installment as per clause 11.3 of FBA and offered a delay penalty of Rs. Rs. 5/- per month per Sq ft as per clause 3.3 of FBA, which is totally illegal and arbitrary.

21. That as the delivery of the flat was due on 05.05.2013 prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainant is not liable to incur additional financial burden of GST due to the delay caused by the respondents. Therefore, the respondents should pay the GST on behalf of the complainant. But it is strange that the builder collects the GST from complainant and enjoys the input credit as a bonus, which is matter of investigation.

22. That the respondents have indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment to the complainant and his family has been rudely and cruelly been dashed the savored dreams, hopes and expectations of the complainant to the ground and he is eminently justified in seeking the interest on paid money for the delay period. Moreover, the complainant also took housing loan from HDFC for payment to the developer against the allotted unit and is paying monthly installments besides staying in rented accommodation, putting additional burden on his funds.

23. That the respondents at the time of offer of possession forcibly imposed escalation cost and increased the super area of flat 1000 sq. ft. to 1079 sq. ft. But the carpet area remains the same which has been objected by the complainant at the time of offer of possession. It is unjustified and illegal.

60

24. That the respondents had raised illegal and unjustified demand towards VAT of Rs. 25,150/-, an intimidate attempt to coerce and obtain an illegal and unfounded amount.

25. That the respondents demanded one year of advance maintenance charges 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 12 months, without having giving the possession and without the registration of the flat is absolutely illegal. A demand for security by way of IFMS was also raised along with offer of possession and the same being illegal and arbitrary.

26. That keeping in view the snail pace of work at the construction site and half-hearted promises of the respondents, and tricks of extra more and more money from complainant pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct of the respondents, consequently injuring the interest of the buyers including the complainant who has spent his 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 respondents conducted the business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.

C. Relief sought by the complainant:

27. The complainant has sought following relief(s):

i. Pass an order for delay interest on paid amount of Rs. 2,948,629.50/- from 05.08.2013 along with pendent lite and future interest till actual possession thereon @18%.

ii. Direct the respondents to quash escalation cost of Rs.6,44,452/-.

iii. Direct the respondents to quash the increased in super area as carpet area remain same as previous.

iv. Direct the respondents to quash the VAT charges and will pay by own.

v. Direct the respondents to quash the one year advance maintenance charges Rs. 45,835.92/-.

vi. Direct the respondent to pay interest on maintenance security.

vii. Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

28. 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:

29. That the respondents had diligently applied for registration of the project in question i.e. "Spacio" located at Sector-37D Gurugram before this Hon'ble Authority and accordingly, registration certificate no. 300 dated13.10.2017 was issued by this hon'ble authority wherein the registration for the said project was valid for a period till 12.10.2020.

59

Meanwhile, an occupation certificate with respect to the project in question was granted by the competent authority on 30.07.2020.

30. That the complainant has 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 respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. The complainant has concealed the following facts:

i. That the complainant has concealed from this hon'ble authority that with a motive to encourage the allottees to make payments of the dues within the stipulated time, the respondents also gave additional incentive in the form of timely payment discount (TPD) to him and in fact, till date, he has availed TPD of Rs 78,462/. The complainant was also offered a discount on BSP as well as launch discount of Rs. 75,750/- and 1,25,000/- respectively.

ii. That the complainant has also concealed from this hon'ble authority that he has given the consent for transfer of the unit in question from the previous allottee vide letter dated 24.1.2011 and has voluntarily accepted and agreed to the allotment of the said unit on 07.01.2012.

iii. That the complainant in the entire complaint concealed the fact that updates regarding the status of the project were provided to him by the respondents vide emails dated 01.02.2016, 21.05.2016, 13.07.2016, 24.05.2017 and 20.06.2017 (pages 122 to 124 and 140 to 142 of the reply).

iv. That the complainant has also concealed from this Hon'ble Authority that the respondents being customer centric company has always addressed his concerns and had requested him and again to visit their office in order to amicably resolve his concerns. However, notwithstanding the several efforts made by the respondents to attend to the queries of the complainant's complete satisfaction, he erroneously proceeded to file the present vexatious complaint before this hon'ble authority against the respondents.

v. That the complainant has also concealed from this hon'ble authority that timely payment was the essence of the contract and he defaulted in making the payment of various demands because of which the respondents were constrained to issue various reminders to the complainant.

From the above, it is very well established, that the complainant has 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 complainant is to unjustly enrich himself at the expenses of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in

58

light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

31. That the agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. This, both the parties being signatory to a duly document flat buyer agreement dated 22.03.2011 executed by the original allottee out of his own free will and without any undue influence or coercion, which was thereafter endorsed in favour of the complainant, the complainant is bound by the terms and conditions so agreed between them.

32. That the demand qua VAT has been duly paid by the complainant without any protest and accordingly the receipt for the same was also issued by the respondents. It is further submitted that the said charges have been agreed by the complainant right from the beginning and despite being agreed charges, he is now at such belated stage is raising contention against the same with a view to gain at the expenses of the respondents.

33. That at the time of making booking of the unit, the original allottee agreed to pay cost escalation and STP charges and the same were incorporated in the FBA. It was further submitted that the cost escalation and STP charges if any could ascertained and finalized at the time of offer of possession. Thus, the said charges were already agreed upon by the complainant 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.

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 &VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/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 them. So, vide orders dated 06.07.2021and 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 and 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. The complainant and other allottees did not file any objections. Though the respondents 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., 'Spacio' are as under:

a) **Super area:** The respondent has increased the super area of the unit from 1800 sq. ft. to 1865 sq. ft. at the time of offer of possession in the Spacio project, whereas the covered area of the unit remains the same.

Recommendation:

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 684.28 sq. ft. (Spacio), may be excluded from the category of common areas.

ii. The area under the feature wall elevation measuring 665.04 sq. ft. (Park Spacio) 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 45713.29 sq. ft. to 38363.97 sq. ft (Park Spacio). Accordingly, the saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio).

b) **Cost escalation:** The company 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) **Holding Charges:** The committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.

g) **Club membership charges:** The complainants 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 respondent or third party on a commercial basis. Hence, they should not be forced to pay for this facility as CMC and requested that the club membership be made optional.

Recommendation:

i. After deliberation, it was agreed upon that club membership will be optional.

ii. Provided, if an allottee opts out to avail of this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.

iii. In view of the consensus arrived, the club membership may be made optional. The respondent may be 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.

h) **Preferential location charges:** The contention of the complainant was limited to the extent that it may be ensured that the PLCs have been levied by the respondent as prescribed in the FBAs. They did not point out any specific case where the respondent has demanded PLCs beyond the scope of the FBAs.

Recommendation: In view of this, the Committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with all the complainants in the projects Spacio and Park Generation.

i) **EDC/IDC:** The contention of the complainant was limited to the extent that they have already paid the full and final amount of EDC/IDC as part of development charges prescribed in the FBAs. They requested the respondent may be restrained from making any further demands on this account in the future.

Recommendation: The committee observes that the concern of the complainants is genuine and recommends that the respondent be directed not to raise any undue and inappropriate demands in the future.

j) **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 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 were arises 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

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	Swatch 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	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-Profiteering benefit passed if any till March 2019 (F)	2.63%
Amount to be refunded Only if greater than (E- F) (G)	0.36%

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

54

Sr. No	Key Issues	Recommendations
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 45713.29 sq. ft. to 38363.97 sq. ft (Spacio). Accordingly, the saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Spacio).
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 Spacio may be charged on the pattern of the allottees of Park Generation 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.	Holding Charges:	The committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that

<table>
<tr><td></td><td></td><td colspan="4">no holding charges are payable by the allottee to the developer</td></tr>
<tr><td>7.</td><td>Club membership charges</td><td colspan="4">It was agreed upon that club membership will be optional</td></tr>
<tr><td>8.</td><td>Preferential location charges</td><td colspan="4">In view of this, the committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with all the complainants in the projects Spacio and Park Generation</td></tr>
<tr><td>9.</td><td>EDC/IDC</td><td colspan="4">The committee observes that the concern of the complainants is genuine and recommends that the respondent be directed not to raise any undue and inappropriate demands in the future.</td></tr>
<tr><td>10.</td><td>HVAT</td><td>Period</td><td>Scheme</td><td>Effective Rate of Tax</td><td>Whether recoverable from Customer</td></tr>
<tr><td></td><td></td><td>Up to 31.03.2014</td><td>Haryana Alternative Tax Compliance Scheme</td><td>1.05 %</td><td>Yes</td></tr>
<tr><td></td><td></td><td>From 01.04.2014 to 30.06.2017</td><td>Normal Scheme</td><td>4.51%</td><td>Yes</td></tr>
<tr><td>11.</td><td>Service Tax</td><td colspan="2">Service tax Rates/Date</td><td colspan="2">Effective Tax Rate after abatement</td></tr>
<tr><td></td><td></td><td colspan="2">01 July 2010 to 31st March 2012</td><td colspan="2">10.30%</td></tr>
<tr><td></td><td></td><td colspan="2">1st April 2012 to 31st May 2015</td><td colspan="2">3.71%</td></tr>
<tr><td></td><td></td><td colspan="2">1st June 2015 to 14th Nov 2015</td><td colspan="2">4.20%</td></tr>
</table>

53

		15th Nov 2015 to 31st May 2016	4.35%
		1st June 2016 to 30th June 2017	4.50%
12.	GST	**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-Profiteering benefit passed if any till March 2019 (F)	2.63%

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 the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office 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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaints 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 respondents

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 respondents had to issue various reminder letters. Clause 11 of the buyer's agreement provides that timely payment of instalment being the essence of the transaction, and the relevant clause is reproduced below:

> *"11.1. Time is of essence*

52

'Timely Payments of all amounts as per this Agreement, payable by the Purchaser(s) shall be the essence of this Agreement. If the Purchaser(s) neglects, omits, ignore, or fails, for any reason whatsoever, to pay to the Seller any of the instalments or other amounts and charges due and payable by the Purchaser(s) under the terms and conditions of this Agreement or by respective due dates thereof or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions herein contained within the time stipulated or agreed to, the Seller / Confirming Party shall be entitled to cancel / terminate this Agreement forthwith and forfeit the booking amounts or amounts paid upto the Earnest Money and Non-Refundable Amount. The Seller/Confirming Party is not under any obligation to send reminders for the payments to be made by the Purchaser(s), as per schedule of payments and for the payments to be made as per demand by the Seller/Confirming Party.

41. 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 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 respondents have not exercised their discretion to terminate the buyer's agreements. Although, it has been admitted by the respondents that complainant was given timely payment discount (TDP) of Rs.78,462/-, accordingly, this stand of respondent is baseless.

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 respondents 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*

51

> *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 allottees intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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:

> *"3. Possession*
>
> *3.1Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control 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 and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of* ***36 months from the date of booking/registration of Flat****. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of* ***180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony*** *from the Authority....."* *(Emphasis supplied)*

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 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 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 the builder/promoter and buyers/allottees are protected candidly. The flat 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 flat 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. **Admissibility of grace period:** The promoter proposed to hand over the possession of the said unit within period of 36 months from the date of booking/registration of the flat. The booking of the flat was made on 05.08.2013 as per receipt on page no. 22 of complaint. Therefore, the due date of handing over possession comes out to be 05.08.2014. It is further provided in agreement that promoters 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 30.07.2020, it is evident that the promoter applied for occupation certificate only on 21.01.2020 which is later than 180 days from the due date of possession i.e., 05.08.2014. This clause clearly implies that the grace period was asked for filing and pursuing occupation certificate, therefore as the promoter had applied for the occupation certificate much later than the contractual 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. **Entitlement to delay possession charges to the subsequent allottee:** The entitlement to delay possession charges to a subsequent allottee has already been decided by the authority in complaint bearing no. 4031 of 2019 titled as ***Varun Gupta Vs. Emaar MGF Land Ltd.*** wherein it was held that the term "allottee" as defined under section 2(d) of the Act also includes and means the subsequent allottee, hence the rights and obligation of the subsequent allottee and

the promoter will also be governed by the said builder buyer's agreement. The relevant para of the judgement is reproduced below:

> *"59. Therefore, keeping in view the aforesaid principles of law and arguments advanced by both the parties, the authority is of the view that four bifurcations can be made in respect to entitlement for delay possession charges to the subsequent allottee which are as follows:*
>
> *a.* ***Where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession:***
>
> *.....So, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.*
>
> *b.* ***Where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession but before the coming into force of the Act:***
>
> *...Therefore, in light of* ***Laureate Buildwell judgment (supra)****, the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier.*
>
> *c.* ***Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and before the registration of the project in question:***
>
> *...Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and before the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement.*
>
> *d.* ***Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question:***
>
> *...Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement."*

52. In light of the above, the delayed possession charges are allowed in individual cases w.e.f. the date of admissibility till offer of possession plus 2 months after obtaining occupation certificate or actual handing over of possession, whichever is earlier and the same has been mentioned in the column 8 of the table given below:

Project: SPACIO, Sector-37-D, Gurugram

Possession Clause (3.1): ...the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of **36 months from the date of booking/registration of Flat.** The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of **180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate** in respect of the Colony from the Authority.

Note: The grace period is not included while computing the due date of possession.

1	2	3	4	5	6	7	8
Sr. No	Complaint No./ Title/ Date of filing	Unit no.	Date of booking	Date of agreement	Due date of possession	Offer of possession; total consideration and amount paid as per statement of account annexed with offer of possession	Period for which the complainant(s) is/are entitled to DPC
1	3203/2020 Vijay Kumar Jadhav Vs. M/s BPTP Limited and another 12.10.2020	N-1206 Floor 12th Tower-N (Page no. 39 of complaint)	05.08.2010 (Vide receipt on page no. 22 of complaint)	23.03.2011 [FBA with original allottee on page no. 32 of complaint] SA-04.09.2012	05.08.2013 [36 months from date of booking]	01.08.2020 (Vide possession letter on page no. 175 of reply) TC- Rs. 46,19,151 AP- Rs. 29,48,628	W.e.f. 05.08.2013 till 01.10.2020

2		1845/2019 Pavan Datta Vs. M/s BPTP Limited and another 30.04.2019	M-502 Floor 5th Tower-M (Page no. 25 of complaint)	02.12.2010 (Vide application for allotment on page no. 34 of reply)	25.03.2011 (Page no.16 of complaint) SA- 09.01.2013	02.12.2013 (36 months from the date of booking)	01.02.2021 (Page no. 8 of add. doc. submitted by the respondent) TC- Rs. 61,43,600 AP- Rs. 45,01,611	W.e.f. 02.12.2013 till 01.04.2021
3		5602/2019 Tarun Tuli Vs .M/s BPTP Limited and another 14.11.2019	L-302 Floor 3rd Tower-L (Page no.26 of complaint)	04.05.2011 (Vide payment receipt on page no. 48 of reply)	21.07.2011 (Page no.19 of complaint)	04.05.2014 (26 months from the date of booking)	14.08.2020 (Vide letter of possession, page 139 of reply) TC- Rs. 92,46,567 AP- Rs. 72,88,300	W.e.f. 04.05.2014 till 14.10.2020
4		2671/2020 Mukesh Agarwal Vs. M/s BPTP Limited and another 05.10.2020	L-1706 Floor 17th Tower-L (Page no. 32 of complaint)	21.07.2010 (Vide payment receipt on page no. 21 of complaint)	16.09.2011 (Page no. 27 of complaint)	21.07.2013 (36 months from the date of booking)	31.07.2020 (Vide offer of possession on page no. 63 of complaint) TC- Rs. 44,26,611 AP- Rs. 32,67,906	W.e.f. 21.07.2013 till 31.9.2020
5		2772/2020 Nitin Kumar Vs. M/s BPTP Limited and another 21.10.2020	N-401 Floor 4th Tower-N (Page no. 23 of complaint)	16.08.2010 (vide payment receipt on page no. 53 of reply)	28.03.2011 (FBA is with original allottee is on page no. 19 of complaint) SA- 12.03.2013	16.08.2013 (36 months from the date of booking)	11.08.2020 TC- Rs. 45,52,457 AP- Rs. 32,40,392	W.e.f. 16.08.2013 till 11.10.2020

6	2823/2020 Vivek Kumar Agarwal Vs. M/s BPTP Limited and another 05.10.2020	L-1402 Floor 14th Tower-L (Page no. 38 of complaint)	30.11.2010 (Vide receipt on page no. 21 of complaint)	25.03.2011 (Page no. 31 of complaint) SA-20.10.2018	30.11.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 186 of reply) TC- Rs. 78,85,092 AP- Rs. 60,17,568	W.e.f. 20.10.2018 till 01.10.2020
7	2936/2020 Ila Vashishta through Sh. Ravinder Nathn Vashishta Vs. M/S BPTP Limited and another 08.10.2020	K-G006, ground Floor, tower K (Page No. 44 of complaint)	11.01.2011 (Receipt on page no. 72 of complaint)	24.12.2012 (pg. no.34 of complaint)	24.12.2015 (Calculated from the date of execution of the FBA)	04.08.2020 (Vide offer of possession on page no. 170 of reply) TC- Rs. 59,96,745 AP- Rs. 44,23,954	W.e.f. 24.12.2015 till 04.10.2020
8	2949/2020 Deeksha Seethapathy Vs. M/s BPTP Limited and another 08.10.2020	M-906 9th Floor Tower-M (Page no. 25 of complaint)	03.07.2010 (Vide receipt on page no. 59 of reply)	04.02.2011 (Page no. 24 of complaint)	03.07.2013 (36 months from the date of booking)	01.02.2021 (Vide offer of possession letter on page no. 178 of reply) TC- Rs. 52,82,427 AP- Rs. 38,58,237	W.e.f. 03.07.2012 till 01.04.2021
9	3009/2020 Shilpa Vs. M/s BPTP Limited and another 07.10.2020	L-701 Floor 7th Tower-L (Page no. 32 of complaint)	25.06.2010 (Vide receipt on page no. 21 of complaint)	05.02.2011 (FBA is with original allottee page no. 24 of complaint) SA-06.06.2020	25.06.2013 (36 months from the date of booking)	11.08.2020 (Vide offer of possession on page no. 154 of reply TC- Rs. 40,51,348 AP- Rs. 29,26,501	W.e.f. 06.06.2020 till 11.10.2020

47

10	3010/2020 Kirti Rathore Vs. M/s BPTP Limited and another 07.10.2020	L-1904,19th Floor, Tower-L (Page No. 34 of complaint)	15.07.2010 (Vide receipt on page no. 22 of complaint)	05.09.2014 (Page no. 134 of reply) SA-27.03.2014	15.07.2013 (As per the possession clause of the FBA executed b/w the original allottee and the respondent i.e. 36 months from date of booking)	05.08.2020 (Vide offer of possession on page no. 202 of reply) TC- Rs. 55,06,598 AP- Rs. 41,40,141	W.e.f. 27.03.2014 till 05.10.2020
11	3012/2020 Ankita Sharma Vs. M/s BPTP Limited and another 07.10.2020	L-504 Floor 5th Tower-L (Page no. 32 of complaint)	25.06.2010 (Vide receipt in the name of original allottee on page no. 60 of complaint)	15.02.2011 (FBA is with original allottee on page no. 24 of complaint) SA-09.02.2018	25.06.2013 (36 months from the date of booking)	11.08.2020 (Vide offer of possession on page no. 148 of reply) TC- Rs. 50,38,644 AP- Rs. 37,06,905	W.e.f. 09.02.2018 till 11.10.2020
12	3013/2020 Vishal Rana Vs. M/s BPTP Limited and another 07.10.2020	L-1204 Floor 12th Tower L (Page no. 32 of complaint)	16.07.2010 (Vide receipt on page no. 21 of complaint)	17.02.2011 (Page no. 23 of complaint)	16.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 62 of complaint) TC- Rs. 54,79,974 AP- Rs. 41,06,886	W.e.f. 16.07.2013 till 05.10.2020
13	3126/2020 Pawan Kumar Vs. M/s BPTP Limited and another 29.10.2020	N-1206 17th Floor Tower N (Page No. 47 of complaint)	13.08.2010 (Vide receipt on page no. 36 of complaint)	29.01.2018 (Page no. 42 of complaint) SA-20.04.2017	13.08.2015 (Vide clause 2.8 of BBA within 60 months from date of booking of the unit)	20.08.2020 (Vide offer of possession on page no. 71 of complaint) TC- Rs. 45,15,854 AP- Rs. 32,08,065	W.e.f. 20.04.2017 till 20.10.2020

14	3134/2020 Satyanaraya n Panda Vs. M/s BPTP Limited and another 09.10.2020	N-801 Floor 8th Tower-N (Page no.33 of complai nt)	01.09.2010 (Vide receipt on page no.21 of complaint)	29.03.2011 (Page no.25 of complaint)	01.09.2013 (36 months from the date of booking)	11.08.2020 (Vide possession letter on page no. 65 of complaint) **TC-** Rs. 46,96,718 **AP-** Rs. 33,71,177	W.e.f. 01.09.2013 till 11.10.2020
15	3195/2020 Tushar Adesara Vs. M/s BPTP Limited and another 12.10.2020	N-206 Floor 2nd Tower-N (Page no. 34 of complai nt)	10.09.2010 (Date of allotment vide application for allotment on page no. 58 of reply)	25.03.2011 (FBA with original allottee on page no. 25 of complaint) **SA-** 12.03.2012	10.09.2013 (36 months from the date of booking)	01.08.2020 (Vide possession letter on page no. 173 of reply) **TC-** Rs. 47,92,389 **AP-** Rs. 34,66,773	From 10.09.2013 till 01.10.2020
16	3196/2020 Swati Virmani Vs. M/s BPTP Limited and another 09.10.2020	K-706 Floor 7th Tower-K (Page no. 36 of the complai nt)	25.06.2010 (Vide receipt on page no. 22 of the complaint)	17.02.2011 (Page no. 31 of the complaint) **SA-** 12.05.2014	25.06.2013 (36 months from the date of booking)	01.08.2020 (Vide possession letter on page no. 66 of the complaint) **TC-** Rs. 48,20,791 **AP-** Rs. 34,38,295	W.e.f. 12.05.2014 till 01.10.2020
17	3199/2020 Vaibhav Gupta Vs. M/s BPTP Limited and another 09.10.2020	N-904 Floor 9th Tower-N (Page no.33 of complai nt)	16.08.2010 (Vide receipt on page no.21 of complaint)	29.03.2013 (Page no.28 of complaint)	16.08.2013 (36 months from the date of booking)	04.08.2020 (Vide possession letter on page no.60 of complaint) **TC-** Rs. 39,85,586 **AP-** Rs. 55,25,627	W.e.f. 16.08.2013 till 04.10.2020

46

18	3337/2020 Saurabh Gupta Vs. M/s BPTP Limited and another 13.10.2020	N-602 Floor 6th Tower-N (Page no. 34 of complaint)	27.12.2011 (Vide receipt on page no. 22 of complaint)	09.04.2012 (Page no. 25 of complaint)	21.09.2015 (Calculated from the date of sanction of building plan)	01.08.2020 (Vide letter of possession on page no. 113 of complaint) **TC-** Rs. 1,03,64,831 **AP-** Rs. 80,73,081	W.e.f. 21.09.2015 till 01.10.2020
19	3340/2020 Sushil Kumar Jain Vs. M/s BPTP Limited and another 13.10.2020	N-502 Floor 5th Tower-N (Page no. 33 of complaint)	24.11.2010 (Vide receipt on page no. 21 of complaint)	28.03.2011 (Page no. 25 of complaint)	24.11.2013 (36 months from the date of booking)	01.08.2020 (Page no. 83 of complaint) **TC-** Rs. 78,54,437 **AP-** Rs. 57,82,420	W.e.f. 24.11.2013 till 01.10.2020
20	3346/2020 Deepak Gupta and Ruchika Gupta Vs. M/s BPTP Limited and another 14.10.2020	N-1205 Floor 12th Tower-N (Page no. 35 of complaint)	19.01.2011 (Vide receipt on page no. 21 of complaint)	18.05.2011 (Page no. 27 of complaint)	19.01.2014 (36 months from the date of booking)	04.08.2020 (Vide offer of possession on page no. 177 of reply) **TC-** Rs. 81,56,304 **AP-** Rs. 60,51,892	W.e.f. 19.01.2014 till 04.10.2020
21	3350/2020 Badri Prasad Gupta Vs. M/s BPTP Limited and another 13.10.2020	L-1601 Floor 16th Tower-L (Page no. 34 of complaint)	19.01.2011 (Vide receipt in the name of original allottee on page no. 21 of complaint)	05.02.2011 (Page no. 25 of complaint) **SA-** 01.06.2012	19.01.2014 (36 months from the date of booking)	31.07.2020 (Vide offer of possession letter on page no. 65 of complaint) **TC-** Rs. 44,26,249 **AP-** Rs. 32,67,543	W.e.f. 19.01.2014 till 30.09.2020

22	3376/2020 Vikas Mehta Vs. M/s BPTP Limited and another 13.10.2020	K-1904 Floor 19th Tower-K (Page no. 35 of complaint)	16.07.2010 (Vide receipt in name of original allottee is on page no. 22 of complaint)	14.02.2011 (FBA is with original allottee on page no. 30 of complaint) SA-23.04.2013	16.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 179 of reply) TC- Rs. 45,37,974 AP- Rs. 32,75,786	W.e.f. 16.07.2013 till 05.10.2020
23	3377/2020 Vijay Kumar Vs. M/s BPTP Limited and another 13.10.2020	K-1201 Floor 12th Tower-K (Page no. 34 of complaint)	03.07.2010 (Vide payment receipt on page no. 63 of reply)	05.02.2011 (Page no. 25 of complaint)	03.07.2013 (36 months from the date of booking)	01.08.2020 (Vide letter of possession on page no. 155 of reply) TC- Rs. 48,49,337 AP- Rs. 34,66,843	W.e.f. 03.07.2013 till 01.10.2020
24	3378/2020 Sudesh Gupta and Ritu Gupta Vs. M/s BPTP Limited and another 14.10.2020	N-1102 Floor 11th Tower-N (Page no. 35 of complaint)	13.01.2011 (Vide receipt on page no. 21 of complaint)	18.08.2011 (Page no. 27 of complaint)	13.01.2014 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 62 of complaint) TC- Rs. 81,03,793 AP- Rs. 60,19,184	W.e.f. 13.01.2014 till 01.10.2020
25	3379/2020 Rajesh Kumar and Soni Kumari Vs. M/s BPTP Limited and another 16.10.2020	K-1906 Floor 19th Tower-K (Page no. 42 of complaint)	22.07.2010 (Vide payment receipt on page no. 48 of reply)	30.03.2011 (Page no. 33 of complaint)	22.07.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 138 of reply) TC- Rs. 52,11,534 AP- Rs. 39,71,304	W.e.f. 22.07.2013 till 01.10.2020

26	3380/2020 Deepak Luthra Vs. M/s BPTP Limited and another 16.10.2020	K-1202 Floor 12th Tower-K (Page no. 33 of complaint)	24.08.2010 (Vide receipt on page no. 21 of complaint)	16.03.2011 (Page no. 24 of complaint)	24.08.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 63 of complaint) **TC-** Rs. 79,19,968 **AP-** Rs. 58,48,809	W.e.f. 24.08.2013 till 01.10.2020
27	3381/2020 Ashish Midhha Vs. M/s BPTP Limited and another 22.10.2020	L-102, 1st floor, Tower-L (Page no. 32 of complaint)	13.08.2010 (Vide payment receipt on page no. 80 of reply)	17.03.2011 (Page no. 27 of complaint)	13.08.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 205 of reply) **TC-** Rs. 79,46,364 **AP-** Rs. 60,91,573	W.e.f. 13.08.2013 till 01.10.2020
28	3382/2020 Indu Deshawar Sachdev Vs. M/s BPTP Limited and another 16.10.2020	L-904 9th floor Tower-L (Page no. 34 of complaint)	01.07.2010 (Vide receipt on page no. 21 of complaint)	17.02.2011 (Page no. 25 of complaint)	01.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 62 of complaint) **TC-** Rs. 50,90,739 **AP-** Rs. 37,67,508	W.e.f. 01.07.2013 till 05.10.2020
29	3388/2020 Sudhanshu Singal Vs. M/s BPTP Limited and another 15.10.2020	L-1704 Floor 17th Tower-L (Page no. 28 of complaint)	15.07.2010 (Vide receipt on page no. 21 of complaint)	05.02.2011 (Page no. 24 of complaint)	15.07.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession page no. 191 of reply) **TC-** Rs. 55,98,475 **AP-** Rs. 42,23,602	W.e.f. 15.07.2013 till 05.10.2020

30	3389/2020 Shriya Chakrborty Vs. M/s BPTP Limited and another 15.10.2020	N-1804 Floor 18th Tower-N (Page no. 33 of complaint)	02.12.2010 (Vide receipt on page no. 21 of complaint)	25.03.2011 (Page no. 28 of complaint) SA- 04.06.2012	02.12.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 75 of complaint) TC- Rs. 59,44,769 AP- Rs. 43,62,319	W.e.f. 02.12.2013 till 05.10.2020
31	3394/2020 Ajay Chaturvedi Vs. M/s BPTP Limited and another 15.10.2020	P-1504 Floor 15th Tower-P (Page no. 32 of complaint)	09.09.2010 (Vide payment receipt page no. 54 of reply)	31.03.2011 (Page no. 23 of complaint)	09.09.2013 (36 months from the date of booking)	01.02.2021 TC- Rs. 43,12,250 AP- Rs. 42,18,399	W.e.f. 09.09.2013 till 01.04.2021
32	3604/2020 Kiran Singh Vs. M/s BPTP Limited and another 21.10.2020	L-101 Floor 1st Tower-L (Page no. 33 of complaint)	02.07.2010 (Vide receipt on page no. 23 of complaint)	10.02.2011 (Page no. 29 of complaint)	02.07.2013 (36 months from the date of booking)	20.08.2020 (Vide offer of possession on page no. 142 of reply) TC- Rs. 41,72,028 AP- Rs. 30,44,950	W.e.f. 02.07.2013 till 20.10.2020
33	3605/2020 Hari Narayan Singh Vs. M/s BPTP Limited and another 29.10.2020	N-106 1st Floor Tower-N (Page No. 32 of complaint)	07.09.2010 (Vide payment receipt on page no. 59 of reply)	22.03.2011 (Page no. 27 of complaint)	07.09.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 62 of complaint) TC- Rs. 47,74,600 AP- Rs. 34,19,518	W.e.f. 07.09.2013 till 01.10.2020

34	3670/2020 Harender Kumar Sharma Vs. M/s BPTP Limited and another 26.10.2020	N-1106 Floor 11th Tower-N (Page no. 25 of complaint)	05.08.2010 (Vide receipt on page no. 44 of reply)	18.03.2011 (Page no. 16 of complaint)	05.08.2013 (36 months from the date of booking)	04.08.2020 (Vide offer of possession on page no. 74 of complaint) **TC-** Rs. 45,16,807 **AP-** Rs. 32,09,738	W.e.f. 05.08.2013 till 04.10.2020
35	3734/2020 Digvijay Singh V/S BPTP Limited and another 27.10.2020	N-101 Floor 1st Tower-N (Page no. 30 of complaint)	12.07.2010 (Vide receipt on page no. 21 of complaint)	31.01.2011 (Page no. 25 of complaint)	12.07.2013 (36 months from the date booking)	01.08.2020 (Vide offer of possession on page no. 46 of complaint) TC-44,56,252 AP-32,26,223	W.e.f. 12.07.2013 till 01.10.2020
36	3844/2020 Alok Kumar Vs. M/s BPTP Limited and another 29.10.2020	L-206 2nd Floor Tower L (Page no. 41 of complaint)	25.06.2010 (Vide payment receipt on page no. 48 of reply)	04.02.2011 (Page no. 34 of complaint)	25.03.20103 (36 months from the date of booking)	31.07.2020 (Vide offer of possession on page no. 133 of reply) **TC-** Rs. 41,68,668 **AP-** Rs. 36,44,656	W.e.f. 25.03.2013 till 30.09.2020
37	3845/2020 Rakesh Kumar Vs. M/s BPTP Limited and another 29.10.2020	N-306 3rd Floor Tower N (Page no. 157 of reply)	16.08.2010 (Vide payment receipt on page no. 71 of reply)	15.09.2014 (Page no. 151 of reply) **SA-** 30.04.2014	16.08.2013 (As per the possession clause of the FBA executed b/w the original allottee and the respondent i.e. 36 months from date of booking)	01.08.2020 (Vide offer of possession on page no. 226 of reply) **TC-** Rs. 45,52,417 **AP-** Rs. 32,40,392	W.e.f. 30.04.2014 till 01.10.2020

Corrected vide order dated 29.07.2022
02.8.2022

38	3886/2020 Ranjeet Sharma Vs. M/s BPTP Limited and another 03.11.2020	K-304 Floor 3rd Tower-K (Page no. 28 of complaint)	25.06.2010 (Vide receipt on page no. 71 of reply)	17.03.2011 (Page no. 24 of complaint)	25.06.2013 (36 months from the date of booking)	05.08.2020 (Vide offer of possession on page no. 51 of complaint) **TC-** Rs. 43,86,379 **AP-** Rs. 31,86,747	W.e.f. 25.06.2013 till 05.10.2020
39	3940/2020 Namrata Sharma Vs. M/s BPTP Limited and another 02.11.2020	K-2006 2nd floor Tower-K (Page no. 27 of complaint)	09.07.2010 (Vide receipt on page no. 54 of reply)	04.02.2011 (Page no. 26 of complaint)	09.07.2013 (36 months from the date of booking)	01.08.2020 (Vide offer of possession on page no. 134 of reply) **TC-** Rs. 52,85,768 **AP-** Rs. 38,52,314	W.e.f. 09.07.2013 till 01.10.2020
40	4119/2020 Amit Arora Vs. M/s BPTP Limited and another 20.11.2020	P-1002 Floor 10th Tower-P (Page no. 30 of complaint)	10.01.2011 (Vide receipt page no. 59 of complaint)	06.06.2011 (Page no. 25 of complaint)	10.01.2014 (36 months from the date of booking)	01.02.2021 (Pg no. 5 of additional doc. filed by comp.) **TC-** Rs. 52,85,768 **AP-** Rs. 38,52,314	W.e.f. 10.01.2014 till 01.04.2021
41	4428/2020 Archana and Champa Malik Vs. M/s BPTP Limited and another 04.12.2020	L-1901, 19th floor, tower-L (Annexure R-4 on page no. 64 of reply)	24.06.2010 (Vide payment receipt on page no. 50 of reply)	04.02.2011 (Annexure R-4 on page no. 59 of reply) **SA-** 22.09.2012	24.06.2013 (36 months from the date of booking)	01.08.2020 (Annexure R-14 on page no. 129 of reply) **TC-** Rs. 43,42,476 **AP-** Rs. 31,87,866	W.e.f. 24.06.2013 till 01.10.2020

43

42	6711/2019 Anjali Sachdeva Vs. M/s BPTP Ltd. and another 26.12.2019	Q-1705 Floor 17th Tower-Q (Page no. 40 of complaint)	30.12.2010 (Vide payment receipt on page no. 64 of reply)	03.10.2012 (Page no. 38 of complaint)	03.10.2015 (Calculated from the date of execution of FBA)	01.02.2021 **TC-** Rs. 60,14,000 **AP-** Rs. 57,66,364	W.e.f. 03.10.2015 till 01.04.2021
43	285/2020 Deepak Sharma Vs. M/s BPTP Limited and another 03.02.2020	Q-1604 Floor 16th Tower-Q (Page no. 21 of complaint)	31.08.2010 (Page no. 46 of complaint)	04.04.2011 (Page no. 18 of complaint)	31.08.2013 (36 months from the date of booking)	01.02.2021 **TC-** Rs. 42,80,400 **AP-** Rs. 40,22,353	W.e.f. 31.08.2013 till 01.04.2021
44	291/2020 Brijesh Kumar Sharma Vs. M/s BPTP Limited and another 03.02.2020	N-G001 Ground Floor Tower-N (Page no. 30 of complaint)	17.02.2012 (Date of allotment vide allotment letter with original allottee on page no. 25 of reply)	13.10.2014 (FBA with complainant i.e. second allottee on page no. 28 of complaint) **SA-** 15.02.2014	17.02.2015 (36 months from the date of booking)	14.08.2020 (Page no. 8 of reply) **TC-** Rs. 63,28,043 **AP-** Rs. 47,66,433	W.e.f. 17.02.2015 till 14.10.2020
45	623/2020 Pankaj Pandey Vs. M/s BPTP Limited and another 04.03.2020	K-906 Floor 9th Tower-K (Page no. 55 of complaint)	01.07.2010 (vide receipt on page no. 42 of complaint)	04.03.2011 (Page no. 50 of complaint)	01.07.2013 (36 months from the date of booking)	26.08.2020 (Page 138 of reply) **TC-** Rs. 53,14,864 **AP-** Rs. 23,38,971	W.e.f. 01.07.2013 till 26.10.2020

53. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. 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.*

54. 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.

55. 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., 26.04.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

56. 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.*

42

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;"

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

H.II Increase in super area

58. It is contended that the respondents have increased the super area of the subject unit vide letter of offer of possession dated 01.08.2020 without giving any formal intimation to, or by taking any written consent from the allottee. The said fact has not been denied by the respondents in its reply. The authority observes that the said increase in the area has been as per clause 5 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..."

59. On perusal of record, the super area of the unit was 1000 sq. ft. as per the flat buyer's agreement and it was increased by 79 sq. ft. vide letter of offer of possession, resulting in total super area of 1079 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. (1186.06 x 1.2613) 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."*

60. In the instant case, the super area of the subject flat measuring 1079 sq. ft. would reduce to 1071 sq. ft. on the basis of aforesaid recommendations of the committee report. 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

41

area factor stands reduce from 1.30 to 1.2905. Accordingly, the super area of the unit be revised and reduced by the respondents and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

H.III Cost escalation

61. The complainant has pleaded that the respondents also imposed escalation cost Rs. 6,34,452/- after an increase in super area from 1000 to 1079 sq. Ft. without increasing the carpet area. The respondents in this regard took a plea that cost escalation was duly agreed by the complainant 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:

> *"12.11 The Purchaser(s) understands and agrees that the basic sale price is escalation free except a situation where the cost of steel, cement and other construction materials increase beyond 10%. It is further agreed and understood that the steel price of Rs. 27,500/- per ton and prices of other construction material has been taken as per index price as on 01.09.2009. the company is fully authorised to revise the cost of construction materials, based on market conditions. The revision, if any, shall be intimated to the purchaser(s) at the time of possession. the purchaser(s) agrees and undertakes to unconditionally accept the price revision and pay the escalated amount without any objection or challenge whatsoever."*

62. 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

their 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 recommendation of the committee is 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."*

63. The authority concurs with the recommendations of the committeeand 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 developer.

H.IV VAT charges

64. It is contended on behalf of complainant that the respondents raised an illegal and unjustified demand towards VAT to the tune of Rs. 25,150/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.

65. 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 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. 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 Tax Compliance Scheme	1.05 %	Yes
From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes

66. 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.V Advance maintenance charges

67. 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."*

68. The authority is of the view that 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, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.

H.VI GST

69. The allottees have also challenged the authority of the respondent builders to raised demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondents had raised a demand of Rs.1,79,208/- under the head GST which is illegal and is not liable to repeat to be paid by him.

70. Though the version of respondents is otherwise, since 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-Profiteering benefit passed if any till March 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
Amount to be refund Only if greater than (E- F) (G)	**0.36%**	**0.53%**	**2.99%**	**0.41%**	**2.99%**	**2.99%**

71. 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."

72. 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.**"*

73. 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. In view of the above, 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. 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 70 of this order.

H.VII STP charges, electrification, firefighting and power backup charges

74. In reference to complaint no. **3126 of 2020** titled as **Pawan Kumar and anr. Vs. M/s BPTP Limited,** it was contended by the complainants, on 20.08.2020, the respondent issued an offer of possession letter to the complainants along with various unjust and unreasonable demands under various heads i.e. cost escalation of Rs.6,34,452/-, electrification and STP charges of Rs.86,320/-. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of the flat buyer's agreement.

75. 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."

76. The authority concurs with the recommendation made by the committee and holds 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 Spacio @ 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 Spacio and be charged @ Rs.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.

H.VIII Club membership charges

77. In reference to complaint no. **3126 of 2020** titled as **Pawan Kumar and anr. Vs. M/s BPTP Limited,** it was contended by the complainants that club is not part of the common areas to be transferred to the RWA. It was alleged that the club house is not yet developed. It will be operated and managed by the respondent or third party on a commercial basis. Hence, they should not be forced to pay for this facility as CMC and requested that the club membership be

37

made optional. On the other hand, the respondent submitted that that the complainants at the time of endorsement was aware of clause related to club membership charges. Complainants vide clause 4.2 of the booking duly agreed for the payment of the Club membership charges. It is denied that complainants visited the project site or found that the project is still under construction all the debris were scattered or that the construction is still going on or that the club house is not yet developed or approached road is still under construction or that lifts are still under operation or that project is not complete the project as per specification of BBA. It is submitted that the possession of the unit is complete, and the respondents have already offered the possession of the unit to the complainants. It is submitted that the complainants have been already offered possession on 20.08.2020 after obtaining the OC and completing the construction.

78. The said 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 as under:

> *"...After deliberation, it was agreed upon that club membership will be optional.*
> *Provided if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.*
> *In view of the consensus arrived, the club membership may be made optional. The respondent may be 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."*

79. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is

received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

H.IX Administrative charges

80. In reference to complaint no. **3126 of 2020** titled as **Pawan Kumar and anr. Vs. M/s BPTP Limited,** the complainants have raised an issue w.r.t justification of administrative/registration charges. The allottees submitted that the on 28.08.2020, the respondents issued a tax invoice to the complainants demanding to pay a sum of Rs.62,355/- under the heads of admin charges and maintenance charges (w.e.f. 19.12.2020-18.12.2021) which are unjust and unreasonable demands. On the other hand, the respondent submitted that the demand on account of administrative charges has been raised in accordance with the terms and conditions of the buyer's agreement.

81. On perusal of the tax invoice dated 28.08.2020, the respondent has raised demand on account of "Admin Charges" amounting to Rs. 14,000/-. With respect to the **administrative charges**, the following provisions have been made under clause 2.2 and 7.3 of the flat buyer's agreement and the same are reproduced below for ready reference:

> *"2.2 **"Administrative Charges"** shall mean such charges as the Seller / Confirming Party will incur at the time of execution, registration, purchase of stamp duty, attestations, registration fees and other miscellaneous expenses incurred by the Seller/ Confirming Party while executing and registration of the Conveyance Deed in favour of the Purchaser(s) at the office of Sub-Registrar of Assurances, Gurgaon*

36

7.3. The Purchaser(s) agree that the Seller/Confirming Party shall execute the Conveyance Deed and get it registered in favor of the Purchaser(s) only after receipt of Total Sale Consideration, other charges and Statutory Dues, including but not limited to any enhancements and fresh incidence of tax along with connected expenses including cost of stamp duty, registration fees/charges and other expenses of the Conveyance Deed which shall be borne and paid solely by the Purchaser(s)."

82. The authority after hearing the arguments and submissions made by the parties is of the view that charges which are defined in the agreement are payable by the allottee and any charge which is not part of the agreement will not and shall not be charged/payable by the allottee. It has also been observed by the authority time and again that a lot of charges under the head of various names are being demanded from the allottee which are arbitrary and unjustified. In number of judgements by various courts, it has pointed that the terms of the agreement have been drafted mischievously and are ex-facie one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. (supra)**, wherein the Bombay HC bench held that:

> *"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."*

83. The Hon'ble Supreme Court in the matter of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan (supra)** held that a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The same was also reaffirmed by the Hon'ble

Supreme Court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors. (supra)**. Therefore, the charges so claimed under the agreement should be reasonable and agreeable by the allottee. Further, the charges should not be exorbitant and should be charged on average basis as per the normal practice in this regard.

84. With respect to the contention of the allottee regarding demand of administrative, the authority has already decided this issue in complaint bearing no. CR/4031/2019 titled as ***Varun Gupta Vs. Emaar MGF Land Ltd.*** wherein it has been held as under:

> *"214. The administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹25,000 to ₹80,000. **In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹15,000 in furtherance to several complaints received from homebuyers** that developers charge 1.5% of the total cost of a property in the name of administrative property registration charge. The authority considering the pleas of the developer-promoter is of the view that **a nominal amount of up to Rs.15000/- may be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard**. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged."*
>
> *(Emphasis supplied)*

85. In view of the above, the authority directs that a nominal amount of up to Rs.15000/- can be charged by the respondents-promoters for any such expenses which it may have incurred for facilitating the registration of the property as has been fixed by the DTP office in this regard.

35

H.X Holding charges

86. The allottees have also challenged the authority of the respondent builders to raised demand by way of holding charges on the ground that since the project is incomplete and the offer of possession in not lawful. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer's agreement.

87. With regards to the same, it has been observed that as per sub-clause 7.5 of clause 7 of the flat buyer's agreement, in the event the allottee fails to take the possession of the unit within the time limit prescribed by the company in its notice for offer of possession, then the promoter shall be entitled to charge holding charges. The relevant clause from the flat buyer's agreement is reproduced hereunder:

> *"7. POSSESSION AND HOLDING CHARGES:*
>
> .....
>
> *7.5 Notwithstanding any other provisions stated herein, the Purchaser(s) agrees that if for any reason whatsoever he fails, ignores or neglects to take over the possession of the Unit in accordance with the notice for offer of possession of the Unit sent by the Seller/Confirming Party, Purchaser(s) shall be liable to pay* ***Holding Charges @ Rs.5/- per sq. ft. of the Super Area of the Unit per month till the time Purchaser(s) takes over the possession of the said Unit.*** *The Holding Charges shall be a distinct charge in addition to the Maintenance Charges and not related to any other charges/consideration as provided in terms hereof."*
>
> *(Emphasis supplied)*

88. 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 this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had

upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The relevant para of the committee report is reproduced as under:

> *"**F. Holding Charges:** The Committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgement dated 14.12.2020 in civil appeal no. 3864-3889/2020, hereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The Hon'ble Authority may kindly issue directions accordingly."*

89. In this regard, the authority place reliance on the order dated 03.01.2020 passed by the Hon'ble NCDRC in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015** wherein it has been held as under:

> *"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. **Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges** though it would be entitled to interest for the period the payment is delayed." (Emphasis supplied)*

90. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra).

34

91. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the flat. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

92. In the light of the judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra) and concurring with the view taken by the committee, the authority decides that the respondents promoter cannot levy holding charges on a allottee(s) as it does not suffer any loss on account of the allottee(s) taking possession at a later date even due to an ongoing court case though it would be entitled to interest at the prescribed rate for the period the payment is delayed.

I. Directions of the authority

93. 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 in respect all matter dealt jointly 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 9.30% p.a. for every month of delay from the date of admissibility as has been mentioned in column no. 8 of table in para 52 of this order till the offer of possession plus 2 months or

the date of actual handing over of the possession of the subject flat to the complainants, whichever is earlier. The date of admissibility and amount on which interest is to be calculated for all the connected complaints are detailed in table given in para 52 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 promoters 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 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 provided 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 1.30 to 1.2905. Accordingly, the super area of the unit be revised and reduced by the respondents 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 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 70 of this order.

x. **Advance maintenance charges**: authority is of the view that 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, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents 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 Spacio @ 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 Spacio be charged @ Rs.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.

xii. **Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he

32

shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

xiii. **Administrative charges:** The authority directs that a nominal amount of up to Rs.15000/- can be charged by the respondents-promoters for any such expenses which it may have incurred for facilitating the registration of the property as has been fixed by the DTP office in this regard.

xiv. **Holding charges:** The respondent is 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. 3864-3889/2020 decided on 14.12.2020.

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

95. Complaints stands disposed off. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decrees in individual cases.

96. Files be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.04.2022