BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**605 of 2021**
Date of filing complaint	:	**08.02.2021**
First date of hearing	:	**08.04.2021**
Date of decision	:	**1.02.2023**

	Mr. Sameer Singh Chandhoke **R/O: -** B-1001, Pilots Courts, Essel Towers, Gurugram, Haryana-122002.	**Complainant**
	Versus	
1. 2.	M/s BPTP Limited M/s Countrywide Promoters Private Limited **Regd. Office at: -** M-11, Middle Circle, Connaught Circus, New Delhi-110001	**Respondents**

CORAM:	
Shri Ashok Sangwan	**Member**
Shri Sanjeev Kumar Arora	**Member**
APPEARANCE:	
Shri. Sukhbir Yadav	Advocate for the complainant
Sh. Venket Rao	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	'Spacio', Sector 37-D, Gurugram, Haryana.
2.	Unit no.	N-1002, 10th floor, N-tower (as per page no. 67 of complaint)
3.	Unit admeasuring	1800 sq. ft. (as per on page no. 67 of complaint)
4.	Revised unit area (as per offer of possession)	1865 sq. ft. (as per page no. 168 of reply)
5.	Date of booking	19.11.2010 (as per page no. 31 of complaint)

6.	Date of execution of flat buyer's agreement	14.06.2012 (on page no. 99 of reply)
7.	Possession clause	"**3. Possession** **3.1** Subject 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 hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat.** The Purchaser(s) agrees

		and understands that the Seller/Confirming Party shall be entitled to a grace 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).**
8.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement	19.11.2013
9.	Total sale consideration	Rs 1,19,52,397/- (on page no. 170 of reply
10.	Total amount paid by the complainant	Rs 95,13,799/- (on page no. 170 of reply
12.	Occupation certificate	30.07.2020 (as per page no. 165 of reply)
13.	Offer of possession	01.08.2020 (page no. 168 of reply)
14.	Grace period utilization	In the present case, the promoters are seeking a grace period of 180 days for applying and obtaining of occupancy certificate etc. from DTCP. As a matter of

		fact, from the perusal of occupation certificate dated 30.07.2020 it is implied that the promoters applied for occupation certificate only on 21.01.2020 which is later than 180 days from the due date of possession i.e., 14.06.2015. The clause clearly implies that the grace period is asked for applying and obtaining the occupation certificate, therefore as the promoters applied for the occupation certificate much later than the statutory period of 180 days, they do not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 14.06.2015.

B. Facts of the complaint

3. That on 19.11.2010, the complainant submitted an application showing a willingness to book a residential plot in the project "AMSTORIA-PLOTS" at Sector 102, Gurugram, having an area of 225 sq. yards wherein the basic sale price was agreed to be Rs.39,500/- sq. yards after a discount of Rs.250/- from the original price of Rs.39750/-

		occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 30.07.2020 it is implied that the promoters applied for occupation certificate only on 21.01.2020 which is later than 180 days from the due date of possession i.e., 14.06.2015. The clause clearly implies that the grace period is asked for applying and obtaining the occupation certificate, therefore as the promoters applied for the occupation certificate much later than the statutory period of 180 days, they do not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 14.06.2015.

B. Facts of the complaint

3. That on 19.11.2010, the complainant submitted an application showing a willingness to book a residential plot in the project "AMSTORIA-PLOTS" at Sector 102, Gurugram, having an area of 225 sq. yards wherein the basic sale price was agreed to be Rs.39,500/- sq. yards after a discount of Rs.250/- from the original price of Rs.39750/-

per Sq. Yards. The complainant also submitted a cheque of Rs.9,00,000/- along with the application.

4. That the respondents upon receiving the said application issued a letter dated 11.12.2010 wherein acknowledgment of application for provisional booking in the above said project was made. However, the respondents in an arbitrary manner refused to give an earlier agreed discount and booked the plot at the original price of Rs.39,750/- sq. yd. and asked the complainant to submit various documents. As the complainant had already paid the initial amount, he had no option, but to admit the alleged demand of the respondent, as per instructions of the respondents, he submitted all the required documents.

5. That the respondents vide letter dated 25.12.2010 issued a payment request to the complainant asking for the next instalment of 10% of the basic sale price in respect of a provisional booking of a plot (225 sq. yards) in their project. The said letter also consisted of a payment schedule showing the development linked plan and the percentage of the basic sale price to be paid as instalment. The complainant as per the request of the respondent paid an amount of Rs.8,88,750/- on 06.01.2011 and Rs.8,00,000/- on 07.03.2011respectively .

6. That after depositing an amount totalling to Rs.25,88,750/-, the complainant repeatedly asked the respondents to send and enter into builder buyers' agreement in respect of the allotted unit and wrote various emails in this regarding from 16.06.2011 till 23.03.2012 wherein he repeatedly requested for signing the builder buyer's agreement. The respondents going ahead with their threat of cancellation of the allotment of the complainant, cancelled the allotment. When the complainant informed the respondents that he

was going to take punitive action against them, they asked him to accept the allotment of a flat in another project 'Spacio' in sector 37-D, Gurugram. It seems that the respondents had no plot available alleged to have been allotted to the complainant and they devised this method to come out of the previous contract and forced him to accept the flat instead of a plot. The complainant had no option but to accept the offer of the respondents as he had already deposited a substantial amount with the respondents.

7. That on 26.04.2012, the complainant received an allotment letter from the respondents in respect of flat/unit no. N-1002 at a tentative area of 1800 sq. feet at the rate of Rs.4500/- per sq. feet, having three bedrooms plus servant plus study.

8. That A pre-printed, arbitrary, one-sided, and ex-facie flat buyer agreement was executed inter-se the complainant and respondent(s) on 14.06.2012. As per clause No.2, the respondents agreed to sell, transfer, and convey to the complainant the flat bearing No. N-1002, Floor 10th, Tower-N, Project "SPACIO", Park Serene, Sector 37-D, Gurugram, Haryana with an approx. super area of 1800 sq. feet for basic sale price at the rate of Rs.4,500/- per sq. feet. As detailed in clause 2.1 of the apartment buyer agreement, the respondents were to give possession of the unit to the purchaser(s) within the commitment period, with a grace period of 180 days from the expiry of the said commitment period. As per clause No. 3.1 of the apartment buyer agreement "Commitment Period" shall mean, a period of 36 (thirty-six) months from the date of booking of the unit. The plot/ flat was booked on 19.11.2010/ 23.07.2012 inter alia due date of possession was 23.01.2016 (with 6 months grace period). It is pertinent to

mention here that the respondents forced the complainant to enter into the flat buyer's agreement even though originally, he had booked a plot. The respondents in the garb of cancelling and forfeiting the amount paid in the original booking forced him to accept the flat buyer agreement and had not taken into consideration about the interest that would have accrued on the amount paid by him in the original plot agreement utilized by the respondents. The respondents simply transferred the said amount without any interest as the booking amount of the flat buyer agreement even though the complainant had paid a substantial amount.

9. That the complainant after signing the above said flat buyers' agreement issued a mail on 05.07.2012 informing the respondents about submitting the duly signed copy of the flat buyer's agreement. The respondents sent a duly signed copy to the complainant where the date of the flat buyer's agreement was mentioned as 23.07.2012, whereas the body of the agreement reflects the date as 14.06.2012. The complainant kept on depositing the payments well in advance and the respondents gave a discount to him. The payment receipt dated 31.01.2013 of an amount of Rs.7,29,361/-, which is **Annexure A-12**. Payment receipt dated 04.03.2013 of an amount of Rs.6,26,272/-, is **Annexure A-13**, payment receipt dated 03.04.2013 of an amount of Rs.6,26,271/-, is **Annexure A-14** similarly. The respondent sent an email informing the complainant that the construction is going in full swing and further informed the complainant that the respondent shall keep the complainant updated about the construction. The copy of the email is annexed as **Annexure A-15**. That Payment receipt dated 23.11.2016 of an amount of Rs.71,867/- towards VAT, which is

Annexure A-16. Payment receipt dated 02.12.2016 of an amount of Rs.3,80,903/- towards basic sale price, which is **Annexure A-17**. Emails sent by the respondents dated 15.12.2016 and 27.04.2017 are annexed, wherein the respondents appraised about the construction. the financer of the complainant had stopped the payment of the loan amount as the respondents had not submitted the RERA Registration Number and the same was forwarded by him to the respondents vide email dated 07.10.2017 which was replied by them on 21.12.2017 after a delay of two months and the payment in this regard was released by the financer on the same date.

10. That on 01.08.2020, respondents issued an offer of possession letter to the complainant for apartment no. N-1002 & the said letter includes various unjust and unreasonable demands under various heads i.e., cost escalation of Rs.7,37,154/-, electrification, and STP Charges of Rs.1,75,056/-. Moreover, the respondent increased the super area of the unit by 65 sq. ft. without any justification (original super area 1800 sq. ft. and revised super area 1865 sq. ft.). The said offer letter also includes an undertaking cum indemnity format for taking possession, the said undertaking cum indemnity formats have a plethora of clauses, which includes various unjust and unreasonable terms. The respondents asked for payment which was duly paid by the complainant vide receipt dated 10.08.2020 of an amount of Rs.19,22,150/-which is annexed as Annexure A-22, and subsequently, the respondent also asked for maintenance for the period from 30.11.2020 till 29.11.2021 and a sum of Rs.1,88,996/- was submitted vide receipt dated 25.08.2020 which is annexed as Annexure A-23.

11. The complainant visited the project site and found that the project site is still under construction all the debris were scattered here and there, construction work was going on, clubhouse is not yet developed, the approach road is still under construction, lifts are still not operational, basements are not clear, etc. It is pertinent to mention here that the respondent has not completed the project as per the specifications mentioned in the builder buyer agreement. The main grievance of the complainants is that project is still incomplete after passing 04 years from the due date of possession. The complainants have purchased the unit with amenities, not just four walls and a roof, hence the offer of possession is not a lawful offer of possession, and the status of the project is incomplete. It is not safe for the allottees to take possession of the incomplete project. Copies of photographs taken on 15.09.2020 are annexed herewith as annexure A-25(colly). The actual possession of the flat was handed over on 09.12.2020 and a marking to this effect can be found on the no objection certificate dated 25.08.2020 which was given by the complainant to the respondent and the respondent signed the same and handed over to the complainant on 09.12.2020.

12. That the complainant has at all times made payments against the demands of the respondents and as per payment schedule of the agreement pertaining to has flat, therefore the fraudulent act and conduct of the respondents needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter being referred as "the act"),

C. Relief sought by the complainant.

13. The complainant has sought following relief:

- Direct the respondents to provide delay possession charges alongwith prescribed rate of interest.
- Direct the respondent to provide super area calculation.
- To get an order in his favour by restraining the respondents from charging Holding Charges, Admin Charges, and maintenance charges (since the project is incomplete).
- Direct the respondents to restrain from charging club charges, electrification & STP charges of Rs. 86,320/- & fire fighting & power backup charges of Rs. 1,07,900/- .
- The respondent party may kindly be directed to to complete and seek necessary governmental clearences regarding infrastructural and other facilities including road, water, sewerage, electricity etc. before handing over the physical possession of the flats..

D. Reply by the respondents.

14. It is submitted that the complainants have approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, 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 cases 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.

- That the complainant has concealed from this hon'ble authority that respondents transferred all the amount received in customer against his allotment D-94 project 'Amstoria to new booking N-1002 project 'spacio' without deducting any earnest money.
- That the complainant has concealed from this Hon'ble Authority that via offer of possession dated 01.08.2020, the respondents have, as a goodwill gesture, provided a loyalty bonus/ compensation amounting to Rs.4,48,225/- to the complainant.
- That the complainant has concealed from this hon'ble authority that with the motive to encourage him to make payment of the dues within the stipulated time, the respondents also gave additional incentive in the form of timely payment discount to him and in fact, till date, he has availed Timely Payment Discount of Rs 2,59,540/-.
- That the complainant has further concealed from this hon'ble authority that the respondents being a customer centric organization vide demand letters as well as numerous emails have kept updated and informed the complainant about the milestone achieved and progress in the developmental aspects of the project. The respondents vide emails shared photographs of the project in question. However, it is evident to say that they have always acted bonafidely towards customers including the complainant, and thus, has always maintained a transparency in reference to the project. in addition to updating the complainant, the respondents on numerous

occasions, on each and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance. However, notwithstanding the several efforts made by the respondents to attend to the queries of the complainant to their complete satisfaction, the complainant erroneously proceeded to file the present vexatious complaint before this hon'ble authority against the respondents.

15. That agreements that were executed prior to implementation of the Act of 2016 and rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented FBA executed by the complainant out of his own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.

16. It is submitted that as per clause-2 of the agreement titled as "sale consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC). preferential location charges (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (i.e., GST), electrification charges (EC), charges for installing sewerage treatment plant (STP), administrative charges, interest free maintenance security (IFMS), etc. shall also be payable by the complainant.

17. It was communicated to the complainant vide email dated 26.02.2020 that the construction was nearing completion and the respondents

was confident to handover possession of the unit in question by March 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), construction came to a halt, and it took some time to get the labour mobilized at the site.

18. 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 these undisputed documents and submission made by the parties.

E. Observations of the authority

19. 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 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee 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 respondent sought time to file

the objections but, did not opt for the same despite time given in this regard.

F. Jurisdiction of the authority

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

F. I Territorial jurisdiction

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

F. II Subject-matter jurisdiction

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.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-

compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents.

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

20. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the 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. 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. The 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)*** decided on 06.12.2017 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 floor purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

21. Further, 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 as under-

"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."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that

the buyer agreements have been executed in the manner that there is no scope left to the allottees 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 other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants.

23. **Relief sought by the complainants**: The complainants have sought following relief:

- Direct the respondents to provide delay possession charges alongwith prescribed rate of interest.
- Direct the respondent to provide super area calculation.
- To get an order in his favour by restraining the respondents from charging Holding Charges, Admin Charges, and maintenance charges (since the project is incomplete).
- Direct the respondents to restrain from charging club charges, electrification & STP charges of Rs. 86,320/- & firefighting & power backup charges of Rs. 1,07,900/-.
- The respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity etc. before handing over the physical possession of the flats..

H. Findings on the relief sought by the complainants

H.I Delay possession charges

24. The complainant intends to continue with the project and seeks delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

> ***"Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

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

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

26. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and

uncertain but so heavily loaded in favor 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.

27. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

28. 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 i.e. 19.11.2010. Therefore, the due date of handing over possession comes out to be 19.11.2013. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated

30.07.2020, it is implied that the promoter applied for occupation certificate later than 180 days from the due date of possession i.e., 19.11.2013. This clause clearly implies that the grace period was asked for filing and pursuing occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days and does not fulfil the criteria for grant of the grace period. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

Admissibility of delay possession charges at prescribed rate of interest:

29. The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the 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.*

30. 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.

31. 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., 01.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

32. The definition of term 'interest' as defined under section (za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
> (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

H.II Increase in super area

34. It is contended that the respondent has 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 allottees. The said fact has not been denied by the respondent in its reply. The authority observes that the said increase in the area has been as per clause 6 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

> ***"5 ALTERATIONS IN PLANS, DESIGN AND SPECIFICATION AND RESULTANT CHANGES IN AMOUNTS PAYABLE***
>
> *The seller/confirming party is in the process of developing residential blocks in the park generation in accordance with the approved layout plan for the colony. However, if any changes, alterations, modifications in the tentative building plans and/or tentative drawings are necessitated during the construction of the units or as may be required by any statuary authority(s), or otherwise, the same will be effected suitably, to which the purchaser(s) shall raise no objection and hereby gives his unconditional consent..*

35. On perusal of record, the super area of unit was 1800 sq. ft. as per the buyer's agreement and it was increased by 65 sq. ft. vide letter of offer of possession, resulting in total super area of 1865 sq. ft. The said committee in this regard has made following recommendations while submitting report:

> "The above site report was discussed in the meeting of the Committee held on 08.09.2021 and after detailed deliberation, the Committee makes the following recommendations:
>
> (i). The *inclusion of area under pool balancing tank as common area is not justified. Hence, the area under pool balancing tank, measuring 432.48 sq.ft. (Park Generation) and 684.28 sq. ft. (Spacio) may be excluded from the category of common areas.*

(ii). The area under feature wall elevation measuring 12054 sq. ft. (Park Generation) and 6665.04 sq. ft. (Park Spacio) may be excluded from the common areas being an architectural feature.

(iii). Consequent upon exclusion of the above mentioned components from the list of the common areas, the additional common areas will decrease from 45713.29 sq. ft. to 38363.97 sq. ft (Park Spacio) and from 26300 sq.ft. to 13813.48 sq. ft. (Park Generation). ***Accordingly, saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio)*** *and from 1.2829 to 1.2613 (731573/580001.38, Park Generation). In the instant cases, the super area of the apartment measuring 1865 sq. ft. will reduce to 1851.50 sq. ft. (1434.7 x 1.2905) in park spacio and the super area of the apartment measuring 1521 sq. ft. will reduce to 1496.70 sq. ft. (1186.06x1.2613) in park Generation. Accordingly, the respondent company be directed to pass on this benefits to the remaining complainants/allottees.*

viii. The area under the remaining components of the common area mentioned in the Annexure-6(park generation) and Annexure-7 (park spacio) may be allowed to be included in the super area in terms of the enabling clause 2.4 of the agreements."

36. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, it has been increased by 1.29% and not 1.30% as increased by the respondents. Accordingly, the super area of the unit stands revised and reduced and the respondents are directed to pass on this benefit to the complainant/allottee(s).

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

37. It was contended by the complainant that on 01.08.2020, the respondent issued an offer of possession of unit with unjust and unreasonable demands under various heads i.e., ECC+FF+PBIC of Rs. 1,49,200/-, Rs. 1,86,500/-. The respondent submitted that such

charges have been demanded from the allottee in terms of the buyer's agreement.

38. 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."*

39. 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.III Advance maintenance charges

40. 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."*

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

H.IV Administrative charges

42. The complainant has raised an issue w.r.t justification of administrative/registration charges. The respondents issued a tax

invoice to the complainants demanding admin charges which are unjust and unreasonable demands. On the other hand, the respondents submitted that the demand on account of administrative charges has been raised in accordance with the terms and conditions of the buyer's agreement. 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*
>
> *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)."*

43. 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."*

44. 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.

45. 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)*

46. 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.

H.VIII Club membership charges

47. It was contended by the complainants that the respondent has charged a sum of Rs. 1,00,000/- of club membership charge in its letter for offer of possession despite the fact that the construction of the club has not been completed till date. Further, in plethora of judgements of various RERA Authorities; it has been held that the club membership charges cannot be imposed on the allottees till the time the club is not completed and becomes functional. On the other hand, respondent denied that the construction of club has not finished. The respondent has been raising demands as per its whimps and fancies.

48. 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."*

49. 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.V Holding charges

50. 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.

51. 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)*

52. 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."*

53. 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)*

54. 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).

55. 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.

56. 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.

H.VI To direct the respondent to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity , environmental clearances etc before handing over the physical possession of the flat

It is observed that the respondent-promoter has already obtained occupation certificate from competent Authority on 30.07.2020. Occupation Certificate is grated by the competent authority after assurance that the basic amenities such as sewage, water connection, lighting, etc has been completed. Thus, no direction to this effect. The complainant may approach the concerned competent authority if there is any issue w.r.t to these services.

H.VII Direct the respondent to refrain from giving effect to the unfair clauses unilaterally incorporated in the buyer's agreement.

The complainant has not specified any particular clause being unilateral in his complaint. Hence, the issue cannot be deliberated upon.

H. **Directions of the authority**

57. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

1) The respondents are directed to pay interest at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e. 19.11.2013 till offer of possession i.e. 01.08.2020 plus 2 months i.e. 01.10.2020 to the complainant(s) as per section 19(10) of the Act.

2) 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.

3) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% 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.

4) **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.

5) **Advance maintenance charges**: 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.

6) **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.

7) **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 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/-.

8) **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.

9) **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.

58. Complaint stands disposed of.

59. File be consigned to registry.

(Sanjeev Kumar Arora)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.02.2023