

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

Complaint no. : 4799 of 2021  
Date of filing complaint : 09.12.2019  
Date of decision : 09.05.2023

	Ravi Kumar Rao R/O: - B-7/1, DLF Colony, Sector-14, Gurugram, Haryana.	<b>Complainant</b>
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. सत्यमेव जयते	<b>Respondents</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Ankur Berry	Advocate for the complainant
Sh. Harshit Batra	Advocate for the respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 allottees 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 complainant, 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	Mansions Park Prime, Sector 66, Gurugram, Haryana.
2.	Unit no.	MA4-1403 (on page no. 68 of reply)
3.	Unit admeasuring	2764 sq. ft. (on page no. 68 of reply)
4.	Revised unit area	3044 sq. ft. (on page no. 103 of reply)
5.	Date of booking	02.04.2010 (on page no. 27 of reply)
6.	Date of execution of flat buyer's agreement	26.06.2013 (On page no. 62 of reply)
7.	Possession clause	<b>3.1. POSSESSION</b> 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

		<p>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, <b>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.</b> The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 days, after expiry of 36 months, for applying and obtaining the Occupation Certificate in respect of the Colony from the Authority.....” <b>(Emphasis supplied).</b></p>
8.	Due date of delivery of possession	02.04.2013 <b>Note:</b> Grace period is not

		allowed
9.	Total sale consideration	Rs. 1,16,30,554/- (on page no. 103 of reply)
10.	Total amount paid by the complainant	Rs. 73,94,360/- (On page no. 103 of reply)
11.	Occupation certificate	14.02.2020 (On page no. 97 of reply)
12.	Offer of possession	13.03.2020 (On page no. 100 of reply)
13.	Termination letter	14.09.2020 (Page no. 124 of reply)

### B. B. Facts of the complaint

- That the booking amount of Rs.8,00,000/- was paid by Original Allottee, Mr. Chiranjeev Milkha Singh vide Cheque No. 522127 drawn on Citibank dated 02nd April 2010 and respondent(s) issued a receipt of the same on 22nd April 2010.
- That the allotment of a 4 bedroom plus servant room flat admeasuring 2764 sq ft bearing flat No. MA4-1403 (Customer Code:143632) in BPTP Park Prime "Mansions" Sector-66, Gurugram (Haryana) was done on 22nd May 2010 by respondent(s) in the name of Mr. Chiranjeev Milkha Singh as per the following price:

S. No.	Particulars	Amount (Rs.)
1.	Basic Sale Price	80,00,000/-
2.	EDC & IDC	0.00

3.	PLC	0.00
4.	Club Membership Charges	0.00
5.	Electrification and STP Charges	0.00
6.	Car Parking Charges	0.00

**Total:Rs.80,00,000/-**

5. That, after going through the promotional/marketing material i.e. 3-D rendition video of the flat, brochure etc on their company website ([www.bptp.com](http://www.bptp.com)), the complainant visited the office of the respondent in the first week of May 2012 and they gave a very rosy picture of the project and handed over their marketing brochure and also assured about the timely delivery of the project around May 2013 and gave contact details of the brokers from the secondary market for buying the resale options as there was no inventory available with them at that time.
6. The complainant contacted BPTP office again after a week and again was so much impressed by promotional material and verbal allurements of BPTP staff that on 24th July 2012, he eventually purchased from Sh. Chiranjeev Milkha Singh, a 4 Bedroom plus servant room flat admeasuring 2764 Sq Ft bearing Flat No. MA4-1403 (Customer Code:143632) in BPTP Park Prime "Mansions" Sector-66, Gurugram (Haryana) being developed by the respondents through one of the brokers recommended by them.
7. That, the complainant paid a hefty transfer fee of Rs.4,27,411/- in July 2012 and Sept 2012 (Copy of transfer fee is annexed as Annexure P-4a) to respondent(s) and nomination/transfer was done in the name of complainant on 05th Oct 2012.
8. That after lot of dilly-dally by the respondent(s) and regular follow-ups by the complainant, on 26th June 2013, a pre-printed, arbitrary,

one-sided and ex-facie flat buyer agreement was executed between complainant and respondents.

9. That on 13th March 2020, the respondent(s) issued a letter of offer of possession of the unit and demanded Rs.39,49,072.88/- and a separate Tax Invoice towards administrative charges, maintenance charges (w.e.f. 12th July 2020 and till 11th July 2021), Additional FFC and IFMS, amounting Rs.. 3,12,296.50/-. The demand towards this invoice is unjustified as the possession has still not been given and construction/amenities at the site are still not complete. Subsequent maintenance demand is being raised by PARK PRIME RESIDENTS' ASSOCIATION which is totally unjustifiable and shall be paid by BPTP Ltd till the time possession is handed over to the complainant.
10. The said demand letter contains several unreasonable demands i.e., Rs.18,65,972/- under the head "Cost Escalation" and Rs.2,46,086/- under the head "Electrification and STP charges". It is pertinent to mention here that as per flat buyer agreement, cost of electrification charges + firefighting+power backup charges are Rs.50/- per Sq Ft, hence demand under a different head is completely unreasonable. Moreover, the respondent(s) increased the super area of the flat by 280 Sq Ft without any justification (Original Super Area was 2764 Sq Ft and Revised Super Area is 3044 Sq Ft) and demanded Rs.8,10,420.80/-towards it. That as per clause no. 12.11 of flat buyer agreement "that the basic sale clause is escalation free, but it is subject to an escalation of price of steel, cement and other raw material beyond 10% increase as per index price as on 01.09.2009". The respondent(s) did not provide the correct calculation of cost. A certificate from a cost accountant must be required to ascertain the actual cost of construction and its price index.

11. That the main grievance of the complainant in the present complaint is that despite the fact that the complainant has paid more than 90% of the actual amount towards the flat and even ready to pay the remaining amount (if any), the respondent(s) party has failed to deliver the possession of the flat as per specifications and amenities shown in brochure and flat buyer agreement.
12. That the work on other amenities like external and internal services have yet not been completed till date even after more than 10 years from the date of booking, it clearly shows the negligence of the builder.

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

The complainants have sought the following relief:

- Pass an appropriate award directing the Respondents to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of handing over of the possession, on the paid amount (complete in all respects) (as per section 18 of the Real Estate (Regulation and Development) Act, 2016).
- Direct the respondents to provide Super Area calculation.
- Direct the respondents to provide the correct calculation of cost escalation alongwith a certificate from cost accountant/architect.
- Direct the respondents to provide the actual cost of STP without markup.

- Direct the respondents to stop maintenance charges as the possession has still not been handed over to the complainant.

#### **D. Reply by the respondent**

The respondent by way of written reply made the following submissions.

13. It is submitted that occupation certificate has been granted by The Director Town and Country Planning, Haryana, Chandigarh vide its memo bearing no. 4393 dated 14.02.2020. Thereafter, the respondents issued offer of possession of the unit in question to the complainant on 13.03.2020
- 14.. That agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented flat buyer agreement (hereinafter referred to as the "FBA") dated 29.01.2013 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.
15. 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 (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.

16. It is submitted that vide clause 2.4 of the agreement, duly executed, it was clearly agreed that the super area of the respective flats stated therein was tentative and was subject to change till the handing over of physical possession. The plans on the basis of which the project in question was launched were tentative, however, the occupation certificate has been received by the company as per the approved drawings and the final area has been computed at the stage of offer of possession and on computation of the area there is an increase in the super area of the flat i.e., the covered area of the flat and prorata share of the common areas.
17. It is submitted that the proposed timelines for possession being within 36 months from the date of booking/registration of the unit, along with 180 days of grace period which was subject to force majeure circumstances and circumstances beyond control of the respondents. However, the complainant has indulged in selective reading of the clauses of the FBA whereas the FBA ought to be read as a whole. It is further submitted that the respondents vide email has updated the complainants, that the construction of the project in question has been completed in accordance with the sanctioned building plan approved by DTCP vide memo dated 05.06.2012, and in this regard the respondents have already applied for grant of occupation certificate before the statutory authority and is awaiting the same. The remedy in case of delay in offering possession of the unit was also agreed to between the parties as also extension of time for offering possession of the units. It is pertinent to point out that the said understanding had been achieved between the parties at the

stage of entering into the transaction in as much as similar clauses, being Clause-14 of the booking form (proposed timelines for possession), Clause-15 (penalty for delay in offering possession), Clause-36 (Force majeure) had been agreed upon between the parties under the terms and conditions documented in the booking form.

18. All the averments made in the complaint were denied in toto.
19. 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.
20. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST and VAT etc, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges were involved in this cases and others of this project as well as in other projects developed by the respondents, so vide orders dated 06.07.2021 and 17.08.2021, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were given an option to file objections to that report if any. The complainant did not file any objection and the respondents/ builders sought time to file the same but did not opt for the same despite time given in this regard.

#### **E. Jurisdiction of the authority**

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

**E. E. I Territorial jurisdiction**

22. 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.

**E. II Subject-matter jurisdiction**

23. 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.

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.

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

**E.I Pass an appropriate award directing the Respondents to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of handing over of the possession, on the paid amount (complete in all respects) (as per section 18 of the Real Estate (Regulation and Development) Act, 2016).**

- **Direct the respondents to provide Super Area calculation.**
- **Direct the respondents to provide the correct calculation of cost escalation alongwith a certificate from cost accountant/architect.**
- **Direct the respondents to provide the actual cost of STP without markup.**
- **Direct the respondents to stop maintenance charges as the possession has still not been handed over to the complainant.**

24. In the present complaint, the complainant is an subsequent allottee and the transfer/nomination was done in the name of the complainant on 05.10.2012. it is pertinent to mention here that by July 2012, the complainant had paid Rs. 73,94,360/- as per demands raised by the respondents. Further, the respondents pleaded that due

to non-payment by the complainant, the subject unit was cancelled by the respondent on 14.0.2020. The complainant continued with his default and again failed to make payment even after the possession offered to the complainant.

25. The complainant states that no proof of termination of the unit is provided till today whereas the unit is alleged to be terminated in September 2020. The complainant has paid Rs.73,94,360/- out of total sale consideration of Rs.1,16,30,554/-. The counsel for the complainant further submitted that in the allotment, there was no mention of total sale consideration, only the basic sale consideration is mentioned whereas the counsel for the respondent states that all the charges to be charged from the allottee is very well mentioned in clause 2 of BBA and the committee appointed by the authority also upheld those charges and authority is relying upon that committee report of this project by passing detailed orders. The counsel for the complainant states that as per clause 2 of BBA, at page 50 of the complaint, all the columns of various charges are left blank. The complainant further submits that page 103 of the reply to i.e. statement of account cum invoice where only the heads of the charges are mentioned but detailed calculations are not given and the due date of possession was June 2016. But still the complainant has not got the possession and still requesting to hand over the possession.

26. The respondent states that OC was obtained on 14.02.2020 and the offer of possession was made on 13.03.2020 which is at page No.100 of the reply and alongwith that, demand of balance outstanding was also raised which have not been paid till date. The counsel for the respondent further draws attention towards page 93 of the reply stating that the payment plan clearly shows the charges payable by

the allottee. The respondent states that on account of non -payment they issued reminders for making payment after offer of possession. However, they are unable to provide the proof of having terminated the unit and about the information of termination given to the complainant.

27. The authority is of view that the complainant continued with his default and making payment even after various reminder letters, which led to cancellation of his unit, but complainant never received termination letter sent by the respondent and the respondent also unable to provide the proof of having terminated the unit and about the information of termination given to the complainant. The authority is of considered view that the cancellation done by respondent is invalid in the eyes of law.

### **I.I Delay Possession Charges**

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

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

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

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

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

*"Clause 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, from the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Flat from the Authority. The Seller / Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to the handing over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat. In case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of the Flat.*

30. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee

and the commitment date for handing over possession loses its meaning.

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

32. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking i.e 02.04.2010. The period of 36 months from the date of booking /registration of flat expired on 02.04.2013. So, the due date for handing over possession of the allotted unit comes to 02.04.2013. However, there is no material on record that during the period of 180 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the occupation certificate also, it is observed the promoters applied for the issuance of occupation certificate only on 17.05.2017 when the period of 36 months had already expired. So, the promoters cannot claim the



benefit of grace period of 180 days. Consequently, the authority has rightly determined the due date of possession. Thus, the grace period is not allowed, and the due date of possession comes out to be 02.04.2013.

- 33. Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

*Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

- 34.** 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.

- 35.** 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., 09.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

36. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

#### **I-II Cost Escalation**

38. The buyer's agreement duly accepted and signed between the parties, the cost escalation is to be borne by the allottees. The committee while deliberating on this issue took into consideration the estimated cost of construction at the time of booking/agreement, absorption of 5% inflation by the developer, measurement of cost inflation based on CPWD Index and inflation benefits to be provided for the period up to the date of actual offer of possession or up to the date of committed

date of offer of possession. So, taking into consideration all these factors and a certificate of chartered accountant, the committee allowed escalation cost of Rs. 309 per square feet instead of Rs. 723 as raised by the developer. The view taken by the committee in this regard is a reasonable one and the authority agrees to the same and allow the developer to charge cost of escalation of the allotted unit at Rs. 309 per square feet instead of Rs. 723 per sq. ft. from the allottee.

### I-II GST

39. The allottee has 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.4,63,604/- under the head GST which is illegal and is not liable to repeat to be paid by him.
40. Though the version of respondents is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and service tax. Though, specifically the committee did not deal with that issue but observed that its finding would be applicable as given under the heading **other projects**. 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)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%



(A)						
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%

41. In this present complaint, 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 respondent-promoters are 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 agreement. 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

#### **I-III STP Charges**

42. While issuing of offer of possession of the allotted unit, the respondent-builders demanded a sum of Rs. 2,48,086/- under the

head electrification and STP charges. It is pleaded on behalf of complainant that he is not liable to pay that amount and demand for the same has been raised illegally. But the plea advanced in this regard is devoid of merit. The authority concurs with the recommendations made by the committee and Rs. 81.50 per sq ft. would be charged towards electrification & STP charges from the allottee.

#### **I-IV Increased Super Area**

43. It is contended that the respondents have increased the super area of the subject unit vide letter of offer of possession dated 13.03.2020 without giving any formal intimation, by taking any written consent from the allottee. The said fact has not been denied by the respondents in their reply. On perusal of record, the super area of the unit was 2764 sq. ft. as per the flat buyer's agreement and it was increased by 280 sq. ft. vide letter of offer of possession, resulting in total super area of 3044 sq. ft. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduced from 1.352 to 1.338. Accordingly, the super area of the unit would be revised and reduced by the respondents, and they shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

#### **I-V Maintenance Charges:**

44. 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, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been

prescribed in the agreement or where the AMC has been demanded for more than a year

**F. Directions of the Authority:**

45. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- The respondents are directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 02.04.2013 till the offer of possession i.e., 13.03.2020 plus two months i.e., 13.05.2020 to the complainant(s).
- 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 allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against his unit to be paid by the respondents.
- The respondents are directed to handover the possession of the allotted unit to the complainants completes in all aspects as per specifications of buyer's agreement.
- The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoters which is the same rate of interest which the promoter shall be liable to pay

the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- The respondents are directed not to charge anything which is not part of buyer's agreement.

46. Complaint stands disposed of.

47. File be consigned to the Registry.



(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.05.2023



**HARERA**  
**GURUGRAM**