

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

Complaint no. : 4723 of 2021
Date of filing complaint : 07.12.2021
Date of decision : 17.01.2023

Surinder Kumar Agarwal R/O: - MIG-50, Sector-1, Parwano Solan, Himachal Pradesh.	Complainant
Versus	
1. M/s BPTP Limited 2. M/s Countrywide Promoters Pvt. Ltd. Regd. Office at: - M-11, Middle circle, Connaught Circus, New Delhi-110001	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. K.K. Kohli	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 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 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	Park Generations, Sector 37-D, Gurugram, Haryana.
2.	Unit no.	203, 2 nd floor, tower-T6 (Page no. 94 of complaint)
3.	Unit admeasuring	1760 sq. ft. (Page no. 94 of complaint)
4.	Revised unit area	1813 sq. ft. (Vide statement of accounts annexed as annexure A at page no. 149 of reply complaint)
5.	Date of execution of flat buyer's agreement	05.11.2012 (Page no. 86 of complaint)
6.	Possession clause	<p>3. Possession</p> <p>3.1: Subject to force majeure, as defined in clause 10 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every</p>

		<p>installment of the total sale consideration including DC, Stamp Duty and other charges and also subject to the Purchaser(s) having complied with all the formalities or documentation as prescribed by the seller/confirming Party, the seller/confirming party proposes to hand over the physical possession of the said unit to the purchaser(s) within as period of 36 months from the date of execution of Flat Buyers Agreement("Committed Period").The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days (Grace Period) after the expiry of the said commitment period to allow for finishing work and filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the project "Park Generations" (Emphasis supplied).</p>
7.	Due date of delivery of possession	05.11.2015 Note: Grace period is not allowed
8.	Total sale consideration	Rs. 93,48,145/- (Page no. 149 of reply)
9.	Total amount paid by the complainant	Rs. 80,11,485/- (Page no. 149 of reply)
10.	Occupation certificate	20.09.2019 (Page no. 144 of reply)

11.	Offer of possession	16.10.2019 (page no. 146 of reply)
12.	Grace period	<p>In the present case, the promoter is seeking a grace period of 180 days for finishing work and filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 20.09.2019 it is implied that the promoter applied for occupation certificate on 28.06.2019 which is later than 180 days from the due date of possession i.e., 05.11.2015. The clause clearly implies that the grace period is 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, he does 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 05.11.2015.</p>

B. Facts of the complaint

- The respondents issued a provisional allotment letter dated 17.12.2012 allotting flat bearing unit no. T6-203 (hereinafter referred to as 'unit') measuring super built-up area of 1760.00 sq. ft. which was finally revised to 1813.00 sq. ft. in the aforesaid

project for a basic sale consideration at the rate of Rs. 3,660.00 per sq. ft.

4. That a flat buyer's agreement was also executed with the complainant on 05.11.2012 and as per the same, they agreed to deliver the flat within 36 months of signing the FBA i.e. in the year 2015 as per clause 3.1 of the FBA. The complainant was also handed over one detailed payment plan which was construction linked plan.
5. That the respondents sent a letter cum invoice no. BPTP/134492/1503 dated 16.10.2019 termed as offer of possession for unit no. T6-203 with demand of Rs 13,36,660.00. EDC/IDC charges of Rs 6,82,880.00, club membership charges of Rs 100,000.00, cost escalation charges of Rs 6,50,377.00, VAT of Rs 73,133.00 and GST of Rs 1,44,714.00 respectively.
6. That as the complainant was also issued demand of Rs.93,540.00 towards annual maintenance charges and was asked for its payment on 10.11.2019.
7. That the complainant received a call from the respondents office of their representative Mr. Harman and was directed by the said representative to pay an outstanding Rs.10,07,950.00 after deducting a timely payment discount of Rs.28,540.00 and a rebate of Rs. 2,90,000/- the delay as discussed on the phone. The complainant after making the complaint as discussed, sent a mail to the company on 14.11.2019.
8. That as per the demands based on the payment plan, the complainant paid a sum of Rs. 90,83,268.85 towards the said unit against total demands of Rs. 90,83,268.85 raised by the respondents till 2019.

9. That to the utter shock of the complainant even after paying a huge amount of Rs. 90,83,268.85/- the respondents issued a demand notice dated 11.01.2021 to the complainant demanding the payment of Rs. 9,24,713.08/-.

10. Relief sought by the complainant:

The complainant has sought following relief(s):

- To direct the respondents to pay the delay possession charges along with prescribed rate of interest.
- Direct the respondents to refund the club membership charges.
- Direct the respondents to refund the cost escalation charges.
- Direct the respondents to take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the complainant up to the deemed date of offering the possession of the apartment.
- Direct the respondents to refund the amount collected towards STP charges of Rs. 16,045.00 when the BBA did not carry any such condition.

B. Reply by the respondents

11. It is submitted that the respondents had diligently applied for registration of the project in question i.e., "Park Generations" located at Sector-37D, Gurugram before this Hon'ble Authority and accordingly, registration certificate dated 03.01.2018 was issued by it.
12. The complainant is a defaulter as he has failed to take the possession in terms of offer of possession dated 16.10.2019 and filed the complaint with a view to wriggle out from the contractual

obligations. In this regard, it is submitted that the complainant is duty bound to take the possession of the unit within two months of the receipt of the occupation certificate.

13. That the 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 dated 29.11.2012 (hereinafter referred to as the "FBA") executed out of free will and without any undue influence or coercion is binding and they are bound by the terms and conditions so agreed between them. 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.
14. It is submitted that the construction of project has been completed and the occupation certificate for the same has also been received where after, the respondents have already offered possession to the complainant. However, the complainant, being an investor does not wish to take possession as the real estate market is down and there are no sales in secondary market and thus has initiated the present frivolous litigation.
15. All other averments made in the complaint were denied in toto.

16. 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 submissions made by the parties.

Observations of the committee

17. 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 were involved in the cases and pending against the respondents in this project as well as in other projects being 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 by the authority in bunch cases of Mrs. Rashmi Budhraj V/s BPTP Limited and anr. bearing complaint no. 2221/2018 and decided on 12.04.2022 and asked the committee to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were directed to file objections to that report if any. The allottees did not file any objections. Though the respondents sought time to file the objections but did not opt for the same despite time given in this regard.

E. Jurisdiction of the authority

18. The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

19. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

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

F. Findings on the relief sought 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 E.

21. The contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment 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."

22. 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."

23. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view

that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant.

G. I Delay possession charges.

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

"Section 18: - Return of amount and compensation

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

.....

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

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 execution of the Flat buyer agreement (commitment period). The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days after the expiry of said commitment period....."

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 complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

27. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyers/allottee 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 execution of the buyer's agreement i.e. 05.11.2012. Therefore, the due date of handing over possession comes out to be 05.11.2015. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 20.09.2019, it is implied that the promoter applied for occupation certificate only on 28.06.2019 which is later than 180 days from the due date of possession i.e., 05.11.2015. 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 hence 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
29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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., 17.01.2023 is 8.6%. 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 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—
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 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 complainant shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

G.II Cost escalation

34. The complainant has pleaded that the respondents also imposed escalation cost Rs. 6,50,377/-. The respondents in this regard took a plea that cost escalation was duly agreed upon by the complainant at the time of booking and the same was incorporated in the FBA. The undertaking to pay the above mentioned charges was comprehensively set out in the FBA. In this context, following clause of the FBA is noteworthy:

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

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

Conclusion:

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

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

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

37. It is contended by the complainant that the respondents raised unreasonable demands under various heads i.e. Rs. 1,81,300/- for the above mentioned services. On the other hand, the respondents submitted that such charges have been demanded from the allottee in terms of the flat 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 allottee of park generation may be charged in respect of STP charges (@INR 8.85 sq. ft. and ECC+FFC+PBIC (@INR 100 per sq. ft.)

H.V GST

40. The allottee has also challenged the authority of the respondents builder to raise demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondents had raised a demand of Rs.1,44,714/- under the head GST which is illegal and is not liable to repeat to be paid by him.
41. 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 allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

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



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

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

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

amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

43. 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 agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 41 of this order.

G.VIVAT charges

44. It is contended on behalf of complainant that the respondents raised an illegal and unjustified demand towards VAT to the tune of Rs. 73,133/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.
45. The committee took up this issue while preparing report and after considering the submissions made on behalf of the allottee as well as the promoter, observed that the developer is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottee/prospective buyers at the rate of 4.51%

as the promoter has not opted for composition scheme. The same is concluded in the table given below:

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

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

G.VII Club membership charges

47. 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."

48. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondents would 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 respondents for membership of the club, then he shall pay the club membership charges as may be decided by the respondents and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-

F. Directions of the Authority:

49. 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:
- i) 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. 05.11.2015 till the offer of possession i.e. 16.10.2019 plus two months i.e. 16.12.2019 to the complainant as per section 19(10) of the Act.
 - ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

- iv) **Cost escalation:** The authority is of the view that escalation cost against the subject unit can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- v) **VAT Charges:** The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottee/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.
- vi) **GST Charges:** 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. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 41 of this order.
- vii) **Club membership charges:** The respondents would refund the club membership charges if any request were received from the allottee. Provided that if an allottee opts out to

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

50. Complaint stands disposed of.

51. File be consigned to the Registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.01.2023


HARERA
GURUGRAM