



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	217 of 2022
Date of filing.:	04.03.2022
First date of hearing.:	26.04.2022
Date of decision.:	05.07.2023

Bhavana Gupta W/o Tarun Sharma,
R/o 1803, Sector-1, Faridabad

....COMPLAINANT

VERSUS

BPTP Parkland Pride Limited
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Hearing: 6th

Present: - Mr. Nitin Kant Setia, Counsel for the complainant
Mr. Hemant Saini, Counsel for the respondent.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 26.05.2022 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Sector 75, 82 to 85, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	H4-10-SF, admeasuring 1022 sq. ft. Second Floor
6.	Date of builder buyer agreement(with original allottee)	14.09.2010

7.	Due date of possession	14.09.2012
8.	Possession clause in BBA (Clause 4.1)	<p>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being if</p> <p>default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or on completion of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser(s), whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled</p>

		to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).
9.	Total sale consideration	₹ 20,55,999/-
10.	Amount paid by complainant	₹ 22,94,668.96/-
11.	Endorsement in favour of complainant	17.01.2014
12.	Offer of possession.	07.03.2023

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the predecessor of the complainant i.e Mrs Preety Rajpal and Mr. Amit Kumar Rajpal booked a unit in the project of

the respondent namely "Park Elite Floors" situated at Sector 75,82 to 85, Faridabad, Haryana on 09.09.2009 upon payment of ₹ 2,50,000/- as booking amount. They were allotted unit no. H4-10-SF, measuring 1022 sq. ft. Second Floor, Park Elite Floors, Parklands, Faridabad. A floor buyer agreement was executed between both the parties on 14.09.2010. As per clause 4.1 of the agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. 24 months from the date of execution of the agreement, the deemed date of possession works out to 14.09.2012. However, respondent failed to offer possession within time period stipulated in the agreement.

4. That in the year 2014, the unit in question was purchased by the present complainants from the original allottee. The nomination of the unit in favour of the complainants was endorsed by the respondent vide letter dated 17.01.2014.
5. It is submitted that floor buyer agreement with the original allottee was supposed to be signed immediately but due to delay on part of the respondent, builder buyer agreement got signed between the parties on 14.09.2010 i.e. after a delay of 14 months from receiving the booking i.e.

on 09.06.2009 but the parties were acting and performing their part of the contract in the terms agreed between the parties at time of booking, making payments thereof and issuance of receipts from the side of respondent. The time began to run from the date of receipt of first payment by the respondent for the purpose of delivery of possession. In absence of any understanding between the parties, it was impossible for the respondent to demand money and it was impossible for the complainant to part with his money in pursuance of the demand raised from time to time.

6. That respondent played a mischief by collecting a huge amount of ₹ 7,18,635/- before the execution of BBA. Till that point of time complainant was put in a one-sided arbitrary BBA and complainant had no choice but to yield to the demands of the respondent by signing alleged one sided and arbitrary BBA having inequitable clauses. By signing said BBA the starting date for determining the deemed date of possession which ought to have been taken from date of booking got arbitrarily pushed in terms of clause 4.1 stipulated in BBA i.e. 24 months which works out to 14.09.2012. Further it has been submitted that clause 4.1 of the BBA related to delivery of possession ought to be declared as illegal to the extent it stipulates that delivery of possession will be 24 months after the date of execution of BBA and be substituted and read as 24 months from the date of booking as a concluded contract between the

parties came into existence on the date of booking which works out to June, 2011.

7. It is submitted that even after a lapse of more than ten years from deemed date of delivery of possession, respondent is not in a position to offer possession of the booked unit to the complainant. The structure was raised in the year 2011 and it is lying as such from the last 10 years without any maintenance and respondent has abandoned the unit without any reason.
8. That the respondent had overcharged the complainant on account of increase in area from 1022 sq ft to 1170 sq ft. Said demand is illegal because neither there is any justification of increase of more than 10% area with the respondent nor there is any official document to show that increased area has been sanctioned by the competent authority. Respondent is liable to refund the said amount with adequate interest for using the said amount for more than 10 years.
9. That the respondent had raised demand towards EEDC in May 2012 which was duly paid by the original allottee. It is submitted that after expiry of deemed date of possession the complainant was not bound to pay any fresh demands on account of EEDC or any other statutory demands because if the builder had timely performed its part of the contract and handed over the possession in accordance with the promise made at the time of booking of the unit, the conveyance deeds would

have been executed before the demands of EEDC could have been raised, therefore the respondent is liable to refund the said amount with interest.

10. That in case of delay in construction and development, the respondent had made the provision of only Rs 5 per sq of the super built up area per month as compensation to the purchaser in the BBA whereas in case of delay in payment of instalments by complainant, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainant is aggrieved by such unilateral construction of the agreement as Rs 5 per sq ft is 2-3% and is thus too less compared to the exorbitant 18% rate of interest.

11. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

12. That the complainant seeks following relief and directions to the respondent:-

- i. Direct the respondent to handover possession of the unit H-4-08-SF admeasuring 1022 sq ft in H-block, BPTP Park Elite floors, Parklands Sector-84, Faridabad.

- ii. Declare that the terms of the BBA are one-sided, prejudicial to the interest of the purchasers, arbitrary and biased and against the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.
- iii. Direct the respondent to pay delay penalty in terms of Section 18 of the Act from the date of completion of two years and six months from the date of first receipt of money from the allottees .
- iv. Declare that the amount collected towards increase in super area as illegal as there is no increase in the area from the one approved by the State Authorities and there is no approved revision in building plans thereafter from the competent authorities.
- v. Direct the respondent to return the amount collected towards increase in super area for the reason that there was no increase in the area and no revised sanctioned plans showing increased area were ever supplied to the complainant.
- vi. Direct the respondent to pay compensation to the tune of ₹. 5,00,000/- on account of mental agony and harassment.
- vii. Direct the respondent to compensate the complainant for loss of life of building by 10 years as the construction of the unit

was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent.

- viii. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

13. During course of hearing, learned counsel for complainant further submitted that he is not pressing upon the relief clause no. (iv) and (v) with respect to increase in area and refund of amount paid in lieu of said increase.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

14. Learned counsel for the respondent filed detailed reply on 18.04.2023 pleading therein:
15. Since the unit in question is being constructed over a plot area tentatively measuring 109.254 sq.mtr. As per section 3(2)(a) of RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 sq. metres
16. It is submitted that the unit in question was booked by the original allottees in 2009. On 24.12.2009, respondent duly allotted a unit bearing no. H4-10 on the second floor having tentative area of 1022 sq ft.

Original allottees being investor in the real estate market vide agreement to sell dated 23.11.2013 transferred the unit in question to the complainant. Whereafter, the respondent vide endorsement letter dated 17.01.2014 endorsed the unit in question in the name of subsequent allottee. That the present complainant being a subsequent allottee shall be bound by the terms and conditions of the buyer agreement executed on 14.09.2010 with the original allottees. Complainant at the time of purchasing the unit has conducted the due diligence to their satisfaction and was acquainted with the terms and conditions.

17. Respondent has admitted allotment and execution of floor buyer agreement in favour of complainant. It is stated that in terms of FBA dated 14.09.2010 respondent proposed to handover the possession of the unit within a period of 24 months from the execution of FBA or 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser(s), whichever is later along with a grace period of 180 days for filing and grant of occupation certificate.
18. Construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority and Covid-19 etc. As of today, construction ~~th~~at the respondent has duly completed the

construction of the unit of the complainant in an efficient manner and has received occupation certificate on 07.06.2022 from the concerned Authority, a copy of which is annexed as Annexure R-8. Respondent is in process of offering possession of the unit to the complainant.

19. Regarding relief pertaining to refund of amount paid by complainant on ground of increased area, it is submitted that super area of the floor shall be subject to the change/amendment i.e. increase or decrease in terms of clause 2.4 of the BBA. Initially allotted area was tentative and the same was subject to change/alteration/modification/revision. In respect of demand of EEDC, it has been submitted that said demand was raised by the respondent being a statutory demand and is passed onto the government authorities. Complainant is/was bound to remit the same and it was duly remitted without any protest.
20. During the course of hearing, learned counsel for the respondent offered to deliver possession the paid amount along with 9% interest which was outrightly denied by ld. counsel for the complainant. Learned counsel for the respondent further submitted that the plot in question had been booked by the original allottee in the year 2009. As per the buyers agreement dated 14.09.2010, possession of the unit was to be delivered by 14.09.2012. Due to unforeseen circumstances and reasons beyond the control of the respondent as mentioned in the written submission, possession of the unit could not be delivered within stipulated time period.

Thereafter, in the year 2013 the present complainant stepped into the shoes of original allottee. The rights were endorsed in favour of the complainant by respondent on 17.01.2014. The project of the respondent is now complete and occupation certificate for said project has been received on 07.06.2022. Respondent has already offered possession to the complainant vide offer of possession dated 07.03.2023. The dispute pending with regard to said offer of possession is with regard to the period for which the delay interest will be admissible to the complainant. Complainant here has prayed for delay interest from deemed date of possession i.e 14.09.2012 till the fresh offer of possession. However, it is pertinent to note that the complainant in this case is a subsequent allottee who purchased the rights qua the unit in question after expiry of due date of possession. When the complainant executed the agreement to sell dated 23.11.2013 with the original allottees, she was already aware of the exact situation of the project at that time and the fact that possession of the unit was delayed beyond stipulated period. When the name of the complainant was endorsed in place of the original allottees, both parties i.e the respondent and complainant mutually understood that there may be delay in completion of the project for which complainant-allottee would be compensated at a rate agreed between parties which in this case is ₹ 5/- per sq ft per month. Besides, present complainant is a subsequent allottee who has purchased the flat from the open market. At the time of

purchasing the unit, complainant had conducted the due diligence to her satisfaction and was acquainted with the terms and conditions and the subsequent delay caused in delivery of possession. The respondent company was hesitant in effecting such transfers and had allowed the sale only on the condition that the purchaser buying the flat/unit from open market would not saddle the developer with compensation for delay etc. as purchaser is already well aware of the delay already having occurred in the construction of the project. Therefore, the complainant will be entitled to delay interest only from the date of endorsement i.e 17.01.2014 till the date of fresh offer of possession which is 07.03.2023. In support of his argument, he referred to judgement by Hon'ble Supreme Court in Civil Appeal no. 7042 of 2019 titled as M/s Laureate Buildwell Pvt Ltd vs Charanjit Singh , wherein it was observed by Hon'ble Supreme Court that nature and extent of relief, to which a subsequent purchaser can be entitled, would be fact dependent. Relief of interest on refund of principal amounts can be granted from the date the builder acquired knowledge of transfer, or acknowledged it.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection raised by the respondent regarding non

Maintainability of the complaint.



Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to plots measuring 500 Sq. yds., it is observed that the respondent is developing a larger colony over the several acres of land. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. The argument of the respondent is that since the plot does not exceed 500 Sq. yds. therefore, the Authority has no jurisdiction is totally untenable and unacceptable. Promoter is a developer of a large project and this plot is one part of the large number of plots. Jurisdiction of the Authority extends to the entire project and each plot of the said project.

E.II Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 4.1 is 14.09.2012 therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the

control of the respondent or not. The obligation to deliver possession within a period of 24 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2012 and the NGT order referred by the respondent pertains to year 2016, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:



“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

Moreover, the respondent has not given any specific details with regard to delay in payment of instalments by many allottees. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

E.III Objection raised by the respondent regarding with regard to deemed date of possession .

As per clause 4.1 of the floor buyer agreement dated 14.09.2010 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of

floor buyer agreement or payment of 35% of basic sale price alongwith 20% of EDC/IDC. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. 24 months from the date of execution of the agreement, the deemed date of possession works out to 14.09.2012. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to completion of 35% of basic sale price alongwith 20% of EDC/IDC. The drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession.

Finding w.r.t grace period: The promoter had agreed to handover the possession of the within 24 months from the date of execution of floor buyer agreement or on completion of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser(s), whichever is later. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of

occupation certificate with respect to the plot on which the floor is situated. Since; the later milestone for possession i.e. completion of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser is vague, ambiguous and arbitrary, the date of execution of floor buyer agreement is taken as the date for calculating the deemed date of possession. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e. immediately after completion of construction works within 24 months. Thus, the period of 24 months expired on 21.09.2012. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

21. Admittedly the complainant in the present case is a subsequent allottee who purchased a unit in the project in question through open market from original allottees Mrs Preety Rajpal and Mr. Amit Kumar Rajpal vide agreement to sell dated 23.11.2013. The unit in question i.e. H4-10-SF, admeasuring 1022 sq. ft was booked by the original allottees on 09.06.2009 and subsequent thereupon a floor buyer agreement was


G. Patil

signed between the original allottee and the respondent promoter on 14.06.2010. Thereafter, the unit was endorsed in the name of complainant by the respondent vide endorsement letter dated 17.01.2014. Meaning hereby that the complainant stepped into the shoes of the original allottees. On perusal of the documents placed on file it is noted that no fresh floor buyer agreement was signed between the complainant and the respondent promoter, hence the complainant who is a subsequent allottee shall be bound by the terms and conditions stipulated in floor buyer agreement dated 14.09.2010. As per clause 4.1 of the buyers agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement along with a grace period of 180 days for filing and pursuing the grant of occupation certificate from the competent Authority. Whereas, respondent has submitted that the occupation certificate qua the project in question has been received on 07.06.2022. Thereafter, an offer of possession was issued to the complainant on 07.03.2023 i.e after filing of present complaint, however the same was not acceptable to the complainant.

22. The main point of contention between both the parties is with regards to the period for which interest for the delay caused in delivery of possession should be admissible to the complainant. Learned counsel for the respondent has argued that since complainant is a subsequent allottee

who stepped into the shoes of original allottee after expiry of the due date of possession, she is only entitled to delay interest beginning from the date of endorsement and not from the due date of possession.

23. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement. The original allottee due to their own compulsions could not continue to wait for the delivery of possession beyond the due date and were compelled to sell the unit in the year 2013. It was on 23.11.2013 that the present complainant stepped into the shoes of the original allottee. At that time, the complainant had made the purchase after verifying the status of the unit to their satisfaction and was thoroughly acquainted with the terms and conditions. Complainant was very well aware of the fact that the possession of the unit has been delayed and that the construction of the unit is not in accordance with the agreed timeline. There were clear apprehensions that the possession of the unit will be further delayed for an uncertain amount of time. The complainant was already mentally prepared to wait for some time in the future to get possession of the purchased unit unlike the original allottees.
24. The principal argument of the respondent is with regards to the rights of the subsequent allottee i.e the complainant who purchased a unit after being aware of the fact that the due date of possession has already expired

and that the possession of the unit is delayed. It is clear that the complainant allottee was aware of the fact delivery of possession of the unit has been delayed. Complainant entered into the picture only after the endorsement was acknowledged by the respondent on 17.01.2014. Though, the due date of possession in present case was 14.09.2012 but the present complainant did not suffer because of the delayed possession until after the endorsement i.e from January 2014. The subsequent allottee did not suffer any agony and harassment because of the delay till 17.01.2014 to become entitled to claim compensation from the due date of possession. Rather that rights are only bestowed upon the original allottee who themselves exited the project and forego said rights. It is true that the subsequent allottee had stepped into the shoes of the original allottee but the rights of subsequent allottee are fact dependent.

25. The star point in present discussion is with regards to the question whether the subsequent purchaser is not entitled to similar relief as the original allottee, once he or she steps in place of the original allottee and can the subsequent allottee be denied the relief which the original allottee is entitled to lay claim on in case they had continued with the project. When the original allottee entered into an agreement with the respondent builder for purchase of a unit in the project, the delivery was promised to be made within a time frame. Execution of a real estate project is an arduous task. Timely delivery of possession of a real estate project is

dependent on several factors. In the event of hindrance on account of even one of the factors, the whole of the project comes to a stand still. In turn the possession of the unit is delayed. An allottee who has invested in such an under construction project, understands these risk factors . However, in the event the prolongation of the project creates an economic repercussion upon such original allottees, and the allottee is not in a position to wait indefinitely, allottees are constrained to find purchasers to step into their shoes. That such purchasers take over the rights and obligations of the original allottee qua the unit in question. However, the relative equities with regard to the time frame in each case are different. That the subsequent purchaser is not bound by the fears of delay and uncertainty since the picture with regard to the development and subsequent handing over of possession is clearer than at the time of booking of the unit or due date of possession. That a subsequent purchaser makes a purchase only after verifying the latest development of the project and the prospects of further development and willingly chooses to be a part of the project which has already been delayed being very well aware of the reasons thereof. This scenario is entirely different from the mindset of the original allottee who had booked the unit under the apprehension of timely delivery of possession and had to later suffer because of the delay caused in delivery of possession. The subsequent allottee did not have to suffer the period of delay unlike the original

allottees who was stuck in the project because of having invested their money awaiting timely possession.

26. Nonetheless, in cases where the complainant/ subsequent allottee had purchased the unit after expiry of the due date of possession, the Authority is of the view that the subsequent allottee cannot be expected to wait for an uncertain period of time to take possession. Even such allottee waiting for the promised unit and surely they would be entitled to all reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute that knowledge that such delay would continue indefinitely based on prior assumption would not be justified. Furthermore, in cases where the floor buyer agreement was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the due date of possession but before RERA Act 2016 coming, the statutory right to seek delayed possession interest had not accrued in favour of the original allottee. However, after the date of endorsement the subsequent allottee stepped into the shoe of original allottee w.r.t the unit and the possession was not handed over, the subsequent allottee became entitled to the statutory relief of delayed interest and same shall be applicable from the date he was acknowledged as allottee by the respondent promoter. Therefore, the Authority has relied upon the case cited by respondent titled as “**M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh**” in

which the Hon'ble Supreme Court observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. However, mere knowledge that there is delay in delivery of possession does not justify delay beyond a reasonable period of time. Therefore, such subsequent allottee is entitled to relief of refund of principal amount, with interest from the date the builder acquired knowledge of the transfer, or acknowledged it. Relevant part of the order of the Hon'ble Supreme Court is reproduced below:

"31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time

of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms”

27. In present complaint, the respondent endorsed the transfer of booking rights qua the unit in question in respect of the complainant on 17.01.2014 i.e after the due date of possession i.e 14.09.2012. Thereafter, there was a delay of more than 8 years in delivery of possession of the booked unit. The construction of the project was completed by the respondent in the year 2022. Occupation certificate was received on 07.06.2022. Respondent issued an offer of possession to the complainant

on 07.03.2023. At the time of purchase the complainant was aware that the construction of the project is being delayed beyond the due date of possession. However, even the purchaser agrees to purchase a unit with an apprehension that the possession will not be delayed beyond a reasonable expectation, however, in present complaint, the possession has been delayed by more than 8 years from the date of endorsement i.e 17.01.2014 which is an unreasonable delay. Therefore, in light of M/s Laureate Buildwell Pvt Ltd. Vs Charanjee Singh judgement the complainant will be entitled to delay interest for the delay caused in delivery of possession from the date of endorsement i.e 17.01.2014 till the date of offer of possession i.e 07.03.2023. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “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 (NCLR) 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”..”

28. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 05.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

29. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate

prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%) from from the date of endorsement i.e 17.01.2014 till the date of offer of possession i.e 07.03.2023.

30. Authority has got calculated the interest on total paid amount from the date of endorsement i.e 17.01.2014 till the date of offer of possession i.e 07.03.2023 and said amount works out to ₹ 22,40,155/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 07.03.2023 (in ₹)
1.	22,71,224.96/-	17.01.2014	22,21,812/-
2.	23,444/-	15.11.2016	18,343/-
Total:	22,94,668.96/-		22,40,155/-

31. In the complaint file, the complainant has claimed to have paid an amount of ₹ 22,94,671/- to the respondent. However, as per the receipts attached the total paid amount works out to ₹ 22,94,668.96/. Therefore, amount of interest payable to complainant has been calculated on total paid amount of ₹ 22,94,668.96/-.

32. Arguments in respect of force majeure conditions put forth by learned counsel for the respondent cannot be accepted and no such conditions

have been shown to be applicable. Nothing extraordinary has taken place between the date of executing the BBA and the due date of offer of possession.

33. At the time of filing of complaint, complainant has also prayed for relief with respect to increase in area and refund of amount paid in lieu of said increase vide relief clause no. iv and v. However, during course of hearing proceeding learned counsel made oral statement that complainant is not pressing/arguing upon relief no. iv and v with respect to increase in area and refund of amount paid in lieu of increased area, therefore, the said reliefs cannot be granted.

34. The complainant is seeking compensation to the tune of ₹. 5,00,000/- on account of mental agony and harassment and compensation for loss of life of building by 10 years as the construction of the unit was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the



factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

35. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted upon the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of ₹ 22,40,155/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order
- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession is handed over to her.
- (iii) 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/ promoter which is the same



rate of interest which the promoter shall be liable to pay to the allottees.

(iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

36. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



.....
DR. GEETA RATHEE SINGH
[MEMBER]