



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	477 of 2022
Date of filing.:	12.04.2022
First date of hearing.:	31.05.2022
Date of decision.:	05.07.2023

Shilpa Gupta W/o Vikas Gupta,
R/o H.no 17, Top Floor, Road No. 08
Punjabi Bagh Extension, Punjabi Bagh,
West New Delhi-110026

....COMPLAINANT

VERSUS

BPTP Parkland Pride Limited
Plot no. 28, ECE House, K.G Marg,
Connaught Circus, New Delhi -110001

....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Hearing: 6th

Present: - Ms. Shilpa Gupta, Complainant through vc
Mr. Hemant Saini, Counsel for the respondent.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint 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.	PE-311-GF, admeasuring 1371 sq. ft. Second Floor
6.	Date of builder buyer agreement(with	27.01.2012

	original allottee)	
7.	Due date of possession	27.01.2014
8.	Possession clause in BBA (Clause 5.1)	<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 in 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. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for</p>

		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.	Due date of endorsement in favour of complainant/allottee	21.10.2020
10.	Total sale consideration	₹ 26,44,399/-
11.	Amount paid by complainant	₹ 27,31,056.73/-
12.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that original allottees Mr. K. R Gupta and Mrs Sunita Gupta had booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75 to 85, Faridabad, Haryana on

04.06.2009 upon payment of ₹ 2,50,000/- as booking amount. Vide allotment letter dated 06.10.2011, they were allotted unit no. PE-311-GF, measuring 1371 sq. ft. A floor buyer agreement(hereinafter referred as FBA) was executed between both the parties on 27.01.2012. As per clause 5.1 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. 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. From the date of execution of the agreement, the deemed date of possession works out to 27.01.2014. Thereafter, the respondent vide its letter dated 27.05.2013 issued an addendum agreement to the original allottee.

4. It is alleged by the original allottees that they did not receive a copy of the FBA executed between both the parties. Vide email dated 22.06.2018, original allottees apprised the respondent that they were not in the receipt of any of the agreements. In response, vide email dated 04.07.2018, respondent stated that a copy of FBA had already been dispatched to the original allottees. It came to the knowledge of the parties that the copy of the FBA had been lost in transit. The respondent, in consideration of the facts of the matter, requested the original allottees to get a FIR registered subject to loss of the agreement and also get the said news published in daily newspaper. Thereafter, a fresh copy of floor buyer agreement was

issued to the original allottees. However, original allottees were shocked to observe that in the fresh copy of FBA, the stamp paper was issued on 07.12.2012 which was after more than 11 months the date of execution of original agreement. Original allottees were left with no choice but to file a complaint with the police on 26.11.2018 for the alleged harassment. During proceedings, a settlement was arrived at between original allottees and respondent's authorised representative Mr. Jay Shankar to consider the date of execution of agreement as 27.01.2012, on which the initial floor buyer agreement was issued and dispatched to the customer for the purpose of execution. Copy of settlement is annexed as Annexure C-3

5. That the unit in question allotted to the original allottees, has been transferred in favour of their daughter Mrs Shilpa Gupta, i.e present complainant and the nomination of the unit in favour of the complainant was endorsed by the respondent vide letter dated 21.10.2020.
6. 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.
7. It is further stated that till date, the respondent has neither offered possession of the unit 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

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

- i. Direct the respondent to pay complainant delay compensation charges w.e.f 27.01.2012 as per Rule 15 of HRERA Rules 2017.
- ii. Direct the respondent to complete pending works, handover possession of the unit and executed conveyance deed in favour of the complainant.
- iii. Direct the respondent to pay the complainant ₹ 8,00,000/- for mental agony/harassment and for deficiency of services and ₹ 50,000/- towards cost of legal expenses.
- iv. 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.

9. During oral arguments, Ms. Shilpa Gupta, complainant reiterated her averments as submitted in the complaint file. She insisted upon possession of booked unit along with delay interest. She submitted that the date of execution of floor buyer agreement for the purpose of calculation of due date of possession should be taken as 27.01.2012. Since, initially FBA between both the parties was dated 27.01.2012. However, this date was altered to a later date of 07.12.2012 which is a dishonest act on the part of the respondent. As per clause 5.1 of the agreement, possession of the unit was to be delivered by 27.01.2014. Till date, respondent has failed to offer possession of the booked unit. Even in its written submission, respondent has failed to provide a clear timeline as to when the possession of the unit will be delivered. That on 21.10.2020, the unit was transferred in the name of the complainant by the original allottees. The complainant has thus stepped into the shoes of the original allottee and is entitled to the same rights as that of the original allottees. Ms Shilpa Gupta, prayed that direction be issued to the respondent to deliver possession of the booked unit along with delay interest as per Rule 15 of HRERA Rules 2017.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. Learned counsel for the respondent filed detailed reply on 22.09.2022 pleading therein:
11. It is submitted that the original allottees, who are the parents of the present complainant, had booked a unit in the project of the respondent in the year 2009. Vide allotment letter dated 06.10.2011 they were allotted unit bearing no. PE-311-GF tentatively measuring 1371 sq. ft. Subsequently, a floor buyer agreement was executed between both the parties. It is further submitted that the original allottee had lost the original copy of the executed FBA and thereafter registered the report for the referred lost FBA in the year 2018 and got the same published in leading newspaper. It is highlighted that the original allottees had lost the executed FBA and more than 6 years had been passed wherein this issue was not raised even once with the concerned authorities.
12. Further in the year 2019, the original allottees and the respondents have addressed the issue regarding the FBA wherein the original allottees had pressurised the respondent for procuring the delay penalty payment from the date 27.01.2012 and for the same the original allotted had filed complaint against the respondent. Vide letter dated 13.04.2019, respondent had agreed to replace the lost FBA, in furtherance to which


G. Rathore

FBA executed on 07.12.2012 was recorded and legalised without any protest between the parties.

13. That the agreements that were executed prior to the implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus both parties being signatory to a duly documented application form and FBA are bound by the terms and conditions so agreed between them.
14. 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 of the unit has been completed in an efficient manner.
15. At the time of hearing, learned counsel for the respondent offered to deliver possession of the booked unit along with payment of delay interest @ 9% which was outrightly denied by the complainant.
16. Learned counsel for the respondent further submitted that 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 2020 the present complainant stepped into the shoes of the original

allottee. The rights were endorsed in favour of the complainant by respondent on 21.10.2020. The project of the respondent is now complete and the unit of the complainant is ready. Complainant here has prayed for delay interest from the deemed date of possession i.e 27.01.2012, which is not valid since the fresh FBA was executed between both the parties on 07.12.2012 without any protest. Therefore, complainant is wrong to assert that the due date of possession works out to 27.01.2012. It is further 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 booking rights were transferred in the name of the complainants by 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. Therefore, the complainant will be entitled to delay interest only from the date of endorsement i.e 21.10.2020 till the date possession is handed over to the complainant.

17. Respondent has relied upon a judgement by Hon'ble Supreme Court in Civil Appeal no. 7042 of 2019 titled as M/s Laureate Buildwell Pvt Ltd vs Charanjeet 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 regarding execution of FBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per

agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a 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. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA

Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of floor buyer agreement is admitted by the respondent. Said floor buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

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

The due date of possession in the present case as per clause 5.1 is 27.01.2014 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 as 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.


G. Rathore

E.III Objections raised by the respondent regarding date of execution of Floor Buyer Agreement.

In the present complaint, it has been submitted by the complainant that a floor buyer agreement dated 27.01.2012 was initially agreed upon between the original allottees and the respondent builder. However, the original allottees did not receive a copy of said floor buyer agreement. After a series of communication between the parties, a fresh floor buyer agreement was sent to the complainant which bore the date as 07.12.2012 i.e after more than 11 months from the date of original agreement. It has been contested by the complainant that the date on the agreement has been altered by the respondent builder with a malafide intent. Whereas, it has been rebutted by the respondent, stating that the fresh agreement was executed between both the parties without duress.

In view of rival contentions, all the documents placed on record by both the parties were perused in depth regarding the floor buyer agreement in question. Complainant has annexed a copy of the floor buyer agreement as Annexure 24 of the complaint file and respondent has annexed a copy of the same at page 49 of the reply file. Upon perusal, it is observed that the floor buyer agreement was executed between original allottees namely Mr. Kuldeep Raj Gupta and Mrs Sunita Gupta and the respondent qua the unit

DE-311-GE. Said agreement has been duly signed by all the concerned parties and bears the stamp of the respondent company. The agreement has been initially dated as 27.01.2012, which is the date claimed by the complainants. However, there is an overwriting on the said date vide which the date 27.01.2012 had been amended into 07.12.2012. It is pertinent to mention that it is apparent on the face of the document that the date has been manually altered from 27.01.2012 to 07.12.2012. Also, at one place the date has been mixed as 27.12.2012. It has been contested by the complainant that this date has been altered by the respondent. It has been pleaded by the complainant that the original allottees had filed a police complaint dated 26.11.2018 before Police Commissioner, Sector 21, Faridabad against the respondent developer against the fraudulent practice of change in date adopted by the respondent. Pursuant to said complaint, the matter was resolved and settled before Police station: BPTP Faridabad vide settlement letter dated 13.04.2019 which was signed by an authorised representative of respondent and original allottees. As per said settlement proceeded between the parties, it was agreed to consider the date of execution of Buyer's Agreement as 27.01.2012 i.e the date on which the initial agreement was issued and dispatched to the allottee. A copy

of the police report and settlement letter has been annexed as Annexure C-22 and 23 respectively.

In its written submissions, respondent has agreed that the matter with regard to the police complaint dated 26.11.2018 had been settled between the respondent and original allottee vide letter dated 13.04.2019 wherein FBA dated 07.12.2012 was legalised without any demure and protest. It is pertinent to note that the date of FBA as mentioned in the settlement letter is 27.01.2012 and not 07.12.2012 as wrongly mentioned by the respondent. Therefore, upon perusal of submissions and documents placed on record by both parties, it can rightly be ascertained that the date of execution of the Floor Buyer's Agreement is to be considered as 27.01.2012.

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. 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. 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 27.01.2014. 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.

Findings on the relief sought by the complainant

E.IV Direct the respondent to pay complainant the delay compensation charges in terms of agreement as per prevailing Rule 15 of HRERA Rules, 2017 i.e SBI MCLR + 2% (9.30%) RERA Regulations.

In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

“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”.

Clause 5.1 of BBA provides for handing over of possession and is reproduced below:-



“ 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 in 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. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of 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). ”

It is the argument of the complainant that the FBA was executed between the original allottee and the respondent on 27.01.2012. Complainant stepped into the shoes of the original allottee on 21.10.2020 and did not enter into any fresh agreement

with the respondent. As per clause 5.1 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. 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. From the date of execution of the agreement, the deemed date of possession works out to 27.01.2014. However, even after a lapse of more than nine years, respondent has failed to offer possession to the complainant. Upon acknowledgement of transfer by the respondent vide letter dated 21.10.2020, complainant has acquired the rights vested with the original allottees. Since the possession of the unit in question became due as on 27.01.2014 to the original allottees and has not been delivered till date, therefore, complainant is rightfully entitled to claim delay interest from deemed date of possession i.e 27.01.2014 till the date a fresh offer of possession is made to the complainant.

In rebuttal, learned counsel for the respondent has cited judgement by Hon'ble Supreme Court in Civil Appeal no. 7042 of 2019 titled as M/s Laureate Buildwell Pvt Ltd vs Charanjit Singh submitting 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.

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. It is pertinent to mention that the original allottees transferred the unit in question in the name of their daughter i.e the present complainant in the year 2020. The transfer was acknowledged by the respondent builder vide letter dated 21.10.2020. 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 pertinent to mention that the unit was transferred in the name of the complainant on 20.10.2020 i.e after expiry of due date of possession on 27.01.2014 and after coming into force of the RERA Act. However, the project in question has not been registered with the Authority.



First and foremost, it is worthwhile to understand the term allottee as per the RERA Act and whether subsequent allottee is also an allottee as per provisions of the Act?

The RERA Act 2016, provides the definition of the term "allottee" in Section 2 (d). The definition of the allottee as provided in the Act is reproduced as under:

"2

*In this Act, unless the context otherwise requires-(d)
"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

The term "allottee" as defined in the Act also includes and means the subsequent allottee. An original allottee is a person to whom an apartment, plot or building has been allotted or sold by the promoter. Thereafter, a person who acquires the said allotment of apartment, plot or building through sale, transfer or other wise and in whose name the transfer of rights has been endorsed by the promoter, becomes a subsequent allottee.

A handwritten signature in black ink, appearing to read "Ramesh", with a horizontal line underneath it.

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that the act does not differentiate between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification/ use by the promoter. Therefore, the Authority does not draw any difference between the allottee and subsequent allottee per se.

Now the question arises that what are the rights that are bestowed upon a subsequent allottee who has stepped into the



shoes of the original allottee after coming into force of the Act and before the registration of the project in question:

There may be a situation where an allottee has transferred their unit in favour of a subsequent allottee after the Act came into force and where the project has not been registered by the respondent. By virtue of proviso to section 18(1), the Act has created statutory right of delay possession charges in favour of the allottees. As delineated herein above, the term subsequent allottee has been used synonymously with the term allottee in the Act. Though when the Act came into force, many home buyers who were stuck in delayed projects were uncertain as to when the builder will handover possession of the subject unit and being distressed by the said situation, they were forced to sell their unit. Now, the question that arises is whether the transfer of unit in favour of subsequent allottee creates a bar for the later to claim delay possession charges. The answer is in the negative. In the case in hand also, though the builder buyer's agreement between the parties was executed prior to the Act coming into force but the endorsement was made in favour of the subsequent allottee when the Act became applicable. Thus the statutory right under section 18(1) had already occurred in favour of the original allottee. The

subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Although at the time of endorsement of the name in the floor buyer's agreement, the due date of possession had already lapsed but the subsequent allottee as well as the promoter had the knowledge of the statutory right of delay possession charges being accrued in favour of subsequent allottee after coming into force of the Act. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the rules applicable to the subsequent allottee. Moreover, the authority cannot ignore the settled principle of law that the waiver of statutory rights is subject to the public policy and interest vested in the right sought to be waived as reiterated by Hon'ble Supreme Court of India in Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co. (AIR 1959 SC 689). In the present situation, there is nothing which can prove that such right was waived off by the subsequent allottees for either of the two reasons quoted above. In simple words, neither they have got any private benefit by waiving of their right nor does it involve any element of public interest. Therefore, the Authority is of the view that in cases where the subsequent allottee had stepped into the shoes of

original allottee after coming into force of the Act and before the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the Floor buyer's agreement. In present complaint the original allottees transferred their rights in the project qua the unit in question in the name of the complainant in the year 2020. By that time the possession of the unit had already been delayed by 6 years.

Learned counsel for the respondent has placed reliance on the judgement of the Hon'ble Supreme Court titled as "M/s Laureate Buildwell Pvt Ltd vs Charanject Singh" in which it is observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. Authority observes that the findings made by the Hon'ble Supreme Court in the Laureate judgement are applicable 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 deemed date of possession but before RERA Act 2016 coming and as such the statutory right to seek delayed possession interest had not accrued in favour of the original allottee. The plea of the learned counsel for the

respondent does not hold weight in present complaint since the unit has been transferred in the name of the complainant after coming into force of the RERA Act. Though complainant was well aware about the delay that has been caused in the delivery of the project and did not suffer for that period. However, the complainant was also well aware of the rights bestowed upon her as per Section 18 of the RERA Act 2016 which allowed her the same rights as that of the original allottee in terms of the agreement and payment of delayed possession charges. When the respondent transferred the unit in the name of the complainant, respondent- builder was also well aware about the Section 18 of the RERA Act and the consonance between the term allottee and subsequent allottee. Therefore, Authority is not relying upon the case cited by respondent titled as "M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh". Respondent cannot shy away from performing its obligations as per the terms of the agreement and the provisions of the RERA ACT 2016. Complainant is rightly entitled to seek delay possession interest from the due date of possession i.e 27.01.2014. .

18. Admittedly, complainant in this case is a subsequent allottee and the unit was endorsed in the name of complainant by the respondent vide

endorsement letter dated 21.10.2020. An FBA had already been executed between the original allottees and the respondent builder on 27.01.2012. The complainant stepped into the shoes of the original allottee and did not enter into any fresh agreement with the respondent. As per clause 5.1 of possession of the unit was to be delivered within 24 months from execution of floor buyer 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. 24 months from the date of execution of the agreement expired on 27.01.2014. It is an admitted fact that the delivery of possession of the unit has been delayed by the respondent by more than 8 years from the deemed date of possession as per the agreement entered between the parties. Complainant has filed present complaint seeking possession of the unit and delay interest for delay caused in delivery of possession from the deemed date of possession as per the buyers agreement. In its submission, written or oral, respondent has failed to apprise the Authority with regard to the status of construction of the project including the unit of the complainant and status of receipt of occupation certificate.

19. 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.

20. 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. It has further been observed that the complainant is a subsequent allottee who stepped into the shoes of the original allottee after expiry of the due date of possession and coming into force of RERA Act but before the registration of the project is entitled to reap the same benefits qua payment of delay possession charges as had been the case with the original allottees.
21. In present complaint, the possession of the unit should have been delivered by 27.01.2014. However, till date respondent has failed to issue an offer of possession to the complainant. Even in its reply, respondent has failed to express a clear date of handing over of possession of the unit of the complainant. Since the complainant has opted to stay with the project and wait for delivery of possession, therefore, the complainant will be entitled to receive delay interest for the delay caused in delivery of possession from the due date of possession i.e 27.01.2014 till the date an offer of possession has been issued to the complainant after

completion of construction of the project and receipt of occupation certificate. 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”..”

22. 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%.
23. 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 due date of possession i.e 27.01.2014 till the date an offer of possession has been issued to the complainant after completion of construction of the project and receipt of occupation certificate.
24. Authority has got calculated the interest on total paid amount from due date of possession i.e 27.01.2014 till the date of this order i.e 05.07.2023 which works out to ₹ 25,80,463/- and further monthly of ₹ 24,018/- 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.	20,51,281.55/-	27.01.2014	17,92,693/-
2.	3,55,223.69/-	16.04.2014	3,12,715/-
3.	21,051/-	15.11.2016	14,959/-
4.	3,03,500.49/-	21.12.2017	1,79,989/-
Total:	27,31,056.73/-		25,80,463/-
Monthly interest:	27,31,056.73/-		24,018/-

25. 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.

26. The complainant is seeking compensation to the tune of ₹ 8,00,000/- for mental agony/harassment and for deficiency of services and ₹ 50,000/- towards cost of legal expenses. 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

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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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

27. 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 to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to pay upfront delay interest of ₹ 25,80,463/- (till date of order i.e 05.07.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 24,018/- till the offer of possession after receipt of occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession is offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.70% 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.

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


.....
NADIM AKHTAR
[MEMBER]


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