

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

Order pronounced on: 23.08.2023

NAME OF THE BUILDER		M/s BPTP Limited	
PROJECT NAME:		Astaire Garden	
1	CR/3046/2020	Anchal Dhiman V/s BPTP Limited and Country wide promoter private limited	Ms. Priyanka Aggarwal Sh. Harshit Batra
2	CR/4011/2020	Vidit Aggarwal V/s BPTP Limited and Country wide promoter private limited	Ms. Priyanka Aggarwal Sh. Harshit Batra
4	CR/4014/2020	Hemant Makkar V/s BPTP Limited and Country wide promoter private limited	Ms. Priyanka Aggarwal Sh. Harshit Batra

CORAM:

Shri Ashok Sangwan

Member

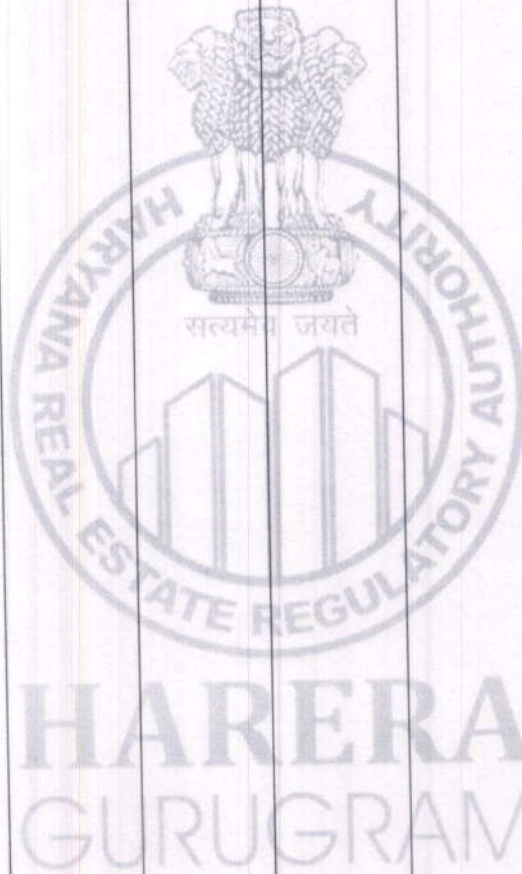
ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Astaire Garden' being developed by the same respondent promoters i.e., M/s BPTP Ltd. & M/s Countrywide Promoters Pvt. Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges, club membership charges, VAT, GST, STP charges and cost escalation etc.
3. The details of the complaints, reply to status, unit no., date of agreement, date of sanction of building plans, due date of possession, offer of possession and relief sought are given in the table below:

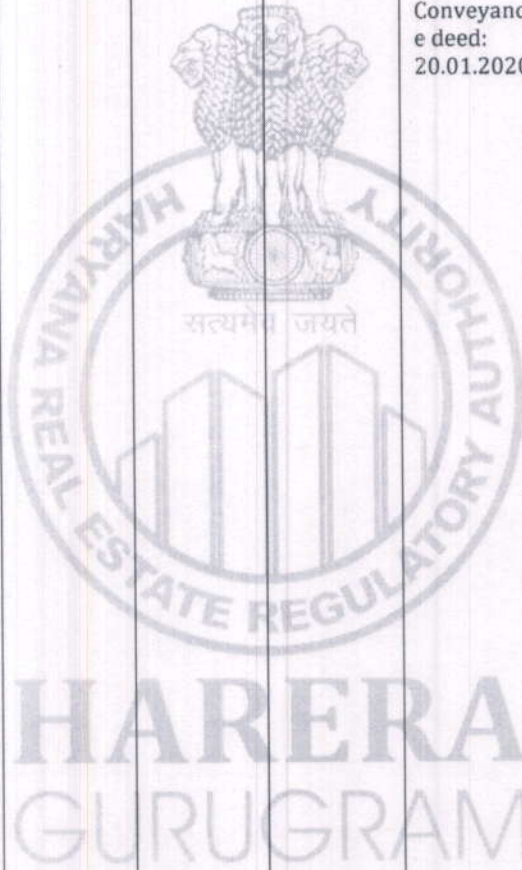
1	2	3	4	5	6	7	8	9
Sr. No	Complaint No. Title Date of filing	Reply status	Unit No.	Date of building plan	Date of agreement	Due date of possession	Offer of possession	Relief Sought
1	CR/3046/2020 Anchal Dhiman Vs BPTP Limited and Country wide promoter private limited 13.10.2020	Reply Received	C-188-GF (annexure C-4 on page no. 58 of complaint)	15.05.2013 (Vide documents submitted by the respondent to BPTP Committee)	10.09.2012 (annexure C-4 on page no. 48 of complaint)	03.05.2016 (calculated from the date of sanction of building plan being later))	25.09.2017 (annexure C-6 on page no. 84 of complaint) TC- Rs. Rs. 1,25,57,046/- AP- Rs. 1,02,34,985/-	-Direct the respondent to pay the entire amount of interest due to the complainants with effect from the committed date of possession as per the floor buyer's agreement to the actual delivery of possession, at the simple rate of interest as per the guidelines laid in the Act of 2016. - Direct the respondent to provide all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible, as elaborated in para-O. 3. Direct the respondent to adjust the interest out of the additional amount, if any payable by the complainants to the respondent as per the guidelines laid in the Act of 2016, at the time of offering the

			<p>Subsequent allottee :</p> <p>30.04.2018 (annexure R-15 on page no. 131 of reply)</p>		<p>possession, before signing the sale deed together with the unambiguous intimation / offer of possession.</p> <p>4. Direct the respondent to ensure no further demand is raised on the complainants till the time the entire interest due to the complainants has been adjusted against additional demand, if any payable by the complainants to the respondent.</p> <p>5. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-P.</p> <p>6. Direct order the respondent to take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartments and direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainant along with detailed justification thereof.</p> <p>7. Direct the respondent to refund the amount collected towards STP charges of Rs. 161,224.83 when the FBA did not carry any such condition.</p> <p>8. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession i.e., 10.03.2016 till the actual delivery of possession within 90 days from the date of the order of this authority.</p> <p>9. Direct the respondent to prepare a plan for the completion of the club and demand money from the members in instalments as per the plan</p>
--	--	--	---	--	---





2	CR/4011/2020 Vidit Agarwal Vs BPTP Limited and Country wide promoter private limited 05.11.2022	Reply Received	B-75-GF (Annexure C-2 on page no. 55 of complaint)	15.05.2013 (Vide documents submitted by the respondent to BPTP Committee)	15.03.2012 (Annexure C-2 on page no. 46 of complaint) Subsequent allottee: 12.09.2019	15.05.2016 (Calculated from the date of sanction of building plan being later)	25.09.2017 (Annexure R-14 on page no. 118 of reply TC- Rs. Rs. 1,09,12,507/- AP- Rs. 1,12,08,067/- Conveyance deed: 20.01.2020	<p>- Direct the respondent to pay the remaining amount of interest due to the complainants with effect from the committed date of possession as per the floor buyer's agreement to the actual delivery of possession, at the simple rate of interest as per the guidelines laid in the Act of 2016.</p> <p>- Direct the respondent to provide all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible, as elaborated in para-M.</p> <p>-Direct the respondent to refund the money collected towards the club membership charges to the complainants with interest as the construction of the club is yet to be started as mentioned in para-N.</p> <p>-Direct the respondent to ensure no further demand is raised on the complainants till the time the entire interest due to the complainants has been adjusted against additional demand, if any payable by the complainants to the respondent.</p> <p>-Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-O.</p> <p>-Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof and direct order the respondent to take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartments.</p> <p>-Direct the respondent to refund the amount collected towards STP charges of Rs. 1,60,582.50 when the FBA did not carry any such condition.</p>
---	---	----------------	--	---	--	--	---	---



16

3	CR/4014/2020 Hemant Makkar Vs BPTP Limited 05.11.2020	Reply Received	E-77-FF (annexure R-5 on page no. 95 of reply)	15.05.2013 (vide documents submitted by the respondent to BPTP Committee)	04.07.2012 (annexure R-5 on page no. 85 of reply)	15.05.2016 (calculated from the date of sanction of building plan being later)	26.09.2017 (annexure 4 on page no. 81 of complaint) TC- Rs. Rs. 84,46,437/ - AP- Rs. 65,61,326/ -	Direct the respondent to pay the remaining amount of interest due to the complainants with effect from the committed date of possession as per the floor buyer's agreement to the actual delivery of possession, at the simple rate of interest as per the guidelines laid in the Act of 2016. - Direct the respondent to provide all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible, as elaborated in para-M. - Direct the respondent to refund the money collected towards the club membership charges to the complainants with interest as the construction of the club is yet to be started as mentioned in para-N. -Direct the respondent to ensure no further demand is raised on the complainants till the time the entire interest due to the complainants has been adjusted against additional demand, if any payable by the complainants to the respondent. - Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-O. -Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof and direct order the respondent to take the opinion of GST experts about the quantum of the GST payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartment. - Direct the respondent to refund the amount collected towards STP charges when the FBA did not carry any such condition
					Subsequent Allotee: 20.07.2018 (annexure R- 12 on page no. 164 of reply)			

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not

handing over the possession by the due date. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.

5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case CR/4014/2020 at serial no. 3 titled as Hemant Makkar Vs. M/s BPTP Limited and anr. are being taken into consideration for determining the rights of the allottees qua delay possession charges, delayed possession charges, club membership charges, VAT, GST, STP charges and cost escalation etc.

A. Unit and project related details

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

CR/4014/2020

Sr. No.	Particulars	Details
1.	Name of the project	'Astaire Gardens', Sector 70A, Gurugram, Haryana.
2.	Unit no.	E-77-FF (annexure R-5 on page no. 95 of reply)
3.	Unit admeasuring	1090 sq. ft. (annexure R-5 on page no. 95 of reply)
4.	Date of sanction of building plan	15.05.2013 (vide documents submitted by the respondent to BPTP Committee)
5.	Date of execution of floor buyer's agreement	04.07.2012 (annexure R-5 on page no. 85 of reply)
6.	Possession clause	" Clause 5.1- Subject to Force Majeure, as defined in Clause 14 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

installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all 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 a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later** ("Commitment 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 filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.

(emphasis supplied)



7.	Due date of delivery of possession	15.05.2016 (Calculated from the date of sanction of building plan being later)
8.	Subsequent Allottee	20.07.2018 (Annexure R- 12 on page no. 164 of reply)
9.	Total sale consideration	Rs. 84,46,437.77/- (Annexure 4 on page no. 83 of complaint)
10.	Total amount paid by the complainant	Rs. 65,61,326.66/- (annexure 4 on page no. 83 of complaint)
11.	Occupation certificate	19.09.2017 (vide documents submitted by the respondent to BPTP Committee)
12.	Offer of possession	26.09.2017 (annexure 4 on page no. 81 of complaint)
13.	Grace period utilization	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 19.09.2017, the promoter did not apply

		<p>for the OC within the stipulated time. 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 15.05.2016.</p>
--	--	--

B. Facts of the complaint

The complainants have submitted as under:

9. That the respondent company issued a provisional allotment letter on favour of the complainant on 24.08.2011 allotting a flat bearing unit no. E-77-FF (hereinafter referred to as 'unit') measuring super built-up area of 1090 Sq. Ft in the aforesaid project of the developer for a basic sale consideration at the rate of Rs 6,135.78 per sq. ft.
10. That the respondent company sent one detailed fba to the original allottees and requested for signing the agreement which was signed on 04.07.2012 and returned to the builder, wherein as per the clause 2.2 and 2.3 floor buyer's agreement, the total sale value of the unit (total consideration) payable by the allottees that are the original allottees to the company i.e. the respondent includes the basic sale price (Basic Sale Price / BSP) of Rs. 6,688,001.00, development charges of Rs.

288,000.00, club membership charges of Rs. 200,000.00, interest free maintenance charges (IFMS) @ Rs. 50 sq. foot and power backup installation charges of Rs 20000.00 per KVA.

11. That the original allottees having dreams of their own residential flat, signed the agreement on 04.07.2012 in the hope that they shall be delivered the flat within 36 months plus six months grace period i.e. by 04.01.2017 as per clause 5.1 of the FBA, page no. 13. The original allottees were also handed over one detailed payment plan (Annexure C, page no. 32 of the said FBA), which was the Construction Linked Plan. It is unfortunate that the dream of possessing one flat of the original allottees was shattered due to the capriciousness, dishonest and diabolical attitude of the respondent.
12. That as per the demands raised by the Respondent, based on the payment plan, the Original Allottees paid a sum of Rs. 8,297,067/- towards the said Plot against total demands of Rs. 8,297,067/-.
13. That the respondent sent a letter cum invoice no. BPTP/133241/1706 dated 26.09.2017 for offer of possession for unit No. E-77-FF with demand of Rs. 2,185,111.11 wherein a demand for the basic sale price of Rs. 6,830,011.22, EDC/IDC charges of Rs. 288,000.00, Club Membership Charges of Rs. 200,000.00, Cost Escalation Charges of Rs 381,674.82, STP and Electrification Charges, VAT of Rs. 61,153.05 and GST of Rs. 216,520.00 were also raised.
14. That on 06.06.2018, the original allottees executed an agreement to sell in favor of the complainants.
15. The respondent is well aware that the project is over delayed and hence the respondent has to pay us an interest as per the provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of

2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017 but unfortunately the same has not been paid.

C. Relief sought by the complainants:

16. The complainants have sought following relief(s):

- i. Direct the respondent to pay the remaining amount of interest due to the complainants with effect from the committed date of possession as per the floor buyer's agreement to the actual delivery of possession, at the simple rate of interest as per the guidelines laid in the Act of 2016.
- ii. Direct the respondent to provide all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible, as elaborated in para-M.
- iii. Direct the respondent to refund the money collected towards the club membership charges to the complainants with interest as the construction of the club is yet to be started as mentioned in para-N.
- iv. Direct the respondent to ensure no further demand is raised on the complainants till the time the entire interest due to the complainants has been adjusted against additional demand, if any payable by the complainants to the respondent.
- v. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-O.
- vi. Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof and direct order the respondent to take the opinion of GST

experts about the quantum of the GST payable in the given circumstances by the complainants up to the deemed date of offering the possession of the apartment.

vii. Direct the respondent to refund the amount collected towards STP charges when the FBA did not carry any such condition

17. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents

The respondents have contested the complaint on the following grounds:

18. It is submitted that the complainants have approached this hon'ble authority for redressal of his alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the Court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

a) That the complainants have further concealed from this hon'ble authority that, respondent vide letter dated 13.08.2018 intimated the complainants that the respondent has no objection in handing

over the possession of the allotted unit for the purpose of carrying out fit outs and thereafter the complainants have accepted physical possession of the allotted unit. However, even after repeated requests of the respondent emails dated 18.08.2018 and recovery letter dated 11.01.2020 and 6.11.2020, the complainants have failed to pay the total stamp duty and further execute the conveyance deed.

- b) That the complainants has concealed from this hon'ble authority that with the motive to encourage the allottees of the project duly provided the additional incentive of Rs.2,20,000 to the original allottees as an discount on basic sale price, hence the net BSP charges form the complainants were less than the original amount of the unit.
- c) That the complainants have further concealed from this Hon'ble Authority that the respondent being a customer centric organization vide demand letters as well as numerous emails have kept updated and informed the complainants about the milestone achieved and progress in the developmental aspects of the project.

19. As per Clause-2 of the duly executed FBA titled as 'consideration and other conditions' specifically documented and provided that in addition to basic sale price (BSP), various other cost components such as development charges (DC, inclusive of EDC/IDC/EEDC), preferential location charges (PLC), club membership charges (CMC), car paring 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 complainants. It was also clarified that while most of the charges as stated above were quantified and accordingly, at the stage of offering possession of the respective units, the said charges were quantified and demanded from the original allottee.

20. It is further submitted that the complainants at the time of the transfer was aware of all such charges and duly agreed to the same without any protest and demur. Now at this belated stage have indulged in upraising contentions against the said charges as well as other facilities/amenities with a view to gain illicit advantages at the expenses of the respondent.
21. Upon receipt of occupation certificate obtained from the department on 19.09.2017, the respondent issued offer of possession letter dated 26.09.2017. That the respondent vide offer of possession letter has provided compensation amounting to Rs. 1,74,400/- towards unit in question. Further, as a goodwill gesture the respondent also provided a special credit compensation of Rs. 1,49,370/- to the original allottees, apart from the compensation already offered to the complainants at the time of offering possession. Thereafter, the complainants thereby have already taken physical possession of the allotted unit and has further leased out the unit and has been enjoying the benefits of the same for the same for more than 2 years. However, the complainants have failed to clear the documentary formalities, pay the stamp duty and further execute the conveyance deed, even after having the possession of the unit for more than 2 years.
22. All other averments made in the complaints were denied in toto.

23. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainant.

24. As per clause 5.1 of the buyer's agreement, the due date of possession comes out to be 15.05.2016. The occupation certificate for the subject unit has been obtained by the respondent promoter on 19.09.2017 and the possession has been offered on 26.09.2017 to the original allottee. The present complainant is a subsequent allottee who has purchased the subject unit from the original allottee on 20.07.2018 i.e., at such a time when the possession of the subject unit has already been offered to the original allottee. It simply means that the present complainant was well aware about the fact that the construction of the subject project and unit has already been completed and the possession of the same has been handed over. Moreover, he has not suffered any delay as the subsequent allottee comes only picture on 20.07.2018 after offer of possession which was made on 26.09.2017 to the original allottee. In the light of the facts mentioned above the present complainant who has become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as he has not suffered any delay in the handing over of possession.

25. The authority is of view that the present allottee became subsequent allottee on 20.07.2018 after possession of the unit was offered to the original allottee. It is pertinent to mention here that the present allottee never suffered any delay and also respondent builder had neither sent any payment demands to the complainant nor complainant paid any payment to the respondent. So, keeping in view all the facts, the complainant is not entitled for delay possession charges and other reliefs. Hence, the complaint filed by the complainant is not admissible.

Directions of the authority

26. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking certain reliefs against the respondents is not admissible and the same is hereby ordered to be rejected.
27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order
28. Complaint stands disposed of.
29. Files be consigned to registry.

HARERA
GURUGRAM


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.08.2023