

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

Order pronounced on: 09.08.2023

NAME OF THE BUILDER		M/s BPTP Limited	
PROJECT NAME:		ASTAIRE GARDEN	
1	CR/2957/2020	Surinder Singh & Seema Rai V/s BPTP private limited	Ms. Priyanka Aggarwal Sh. Harshit Batra
2	CR/2977/2020	Sukhbir Singh V/s BPTP private limited	Ms. Priyanka Aggarwal Sh. Harshit Batra
3	CR/2981/2020	Manu Kapoor & Disha Sharma V/s BPTP private limited	Ms. Priyanka Aggarwal Sh. Harshit Batra
4	CR/2985/2020	Deepak Malik and 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 4 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 status, unit no., date of agreement, date of environment clearance, 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/2957/2020  Surender Singh Vs BPTP Limited  13.10.2020	Reply Received	C-43-SF  (Annexure R-5 on page no. 101 of the reply)	15.05.2013 (vide documents submitted by the respondent to BPTP Committee)	16.03.2012 (annexure R-5 on page no. 95 of the reply)	15.05.2016 (calculated from the date of sanction of building plan being later))	25.09.2017 (Annexure R-16 on page no. 155 of reply)  TC- Rs. Rs. 88,44,689/- AP- Rs. 69,74,078/-	-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-Q. 3. Direct the respondent to pay the entire amount of timely payment rebate to the complainant at the simple rate of interest as per the guidelines laid in the Act of 2016.





					23.10.2019 (Annexure R-20 on page no. 183 of reply)			<p>4. 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-R.</p> <p>5. Direct the respondent to refund the interest of Rs. 43,725/- collected by the respondent, at the simple rate of interest as per the guidelines of the Act of 2016, as explained in para-S.</p> <p>6. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-T.</p> <p>7. 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>9. Direct the respondent to refund the amount collected towards STP charges of Rs. 160,582.50/- when the FBA did not carry any such condition.</p>
2	CR/2977/2020  Sukhbir Singh Vs BPTP Limited  14.10.2020	Reply Received	C-49-SF (annexure R-12 on page no. 95 of the reply)	15.05.2013 (vide documents submitted by the respondent to BPTP Committee)	22.01.2014 (annexure R-12 on page no. 87 of the reply)	22.01.2017 (calculated from the date of execution of floor buyer's agreement being later)	26.09.2017 (annexure R-15 on page no. 129 of reply)  TC- Rs. 90,22,400/- AP- Rs. 71,29,654/-	<p>1. 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>2. 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-Q.</p> <p>3. 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-R.</p>
					Conveyance Deed:  18.07.2018 (annexure R-16 on page no. 156 of reply)			



								<p>4. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-5.</p> <p>5. 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>6. Direct the respondent to refund the amount collected towards STP charges of Rs. 160,582.50/- when the FBA did not carry any such condition.</p>
3	CR/2981/2020  Manu Kapoor and Disha Sharma Vs BPTP Limited  21.10.2020	Reply Received	E-62-SF (Annexure R-6 on page no. 84 of the reply)	15.05.2013 (Vide documents submitted by the respondent to BPTP Committee)	31.01.2012 (Annexure R-6 on page no. 76 of the reply)	15.05.2016 (Calculated from the date of sanction of building plan being later)	25.09.2017 (annexure R-12 on page no. 160 of reply)  TC- Rs. Rs. 73,81,625/  AP- Rs. 56,65,791/	<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-O.</p> <p>3. 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-P</p> <p>4. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-Q.</p> <p>5. 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>
					Subsequent allottee: 12.07.2013 (annexure R-8 on page no. 147 of reply)			
					Conveyance Deed: 25.07.2019 (annexure R-13 on page no. 186 of reply)			



								7. Direct the respondent to refund the amount collected towards STP charges of Rs. 125,896.68/- when the FBA did not carry any such condition
4	CR/2985/2020  Deepak Malik Vs BPTP Limited  21.10.2020	Reply Received	E-46-GF (Annexure R-11 on page no. 92 of the reply)	15.05.2013 (Vide documents submitted by the respondent to BPTP Committee)	28.12.2012 (Annexure R-11 on page no. 84 of the reply)  Conveyance Deed. 21.09.2018	15.05.2016 (Calculated from the date of sanction of building plan being later)	25.09.2017 (annexure R-14 on page no. 131 of reply)  TC- Rs. Rs. 90,30,774/  AP- Rs. 65,14,601/	<p>1. 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</p> <p>2. 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-N.</p> <p>3. 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-O.</p> <p>4. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-P.</p> <p>5. Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof.</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.</p> <p>7. Direct the respondent to refund the amount collected towards STP charges of Rs. 125,896.68/- when the FBA did not carry any such condition.</p> <p>8. 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>





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/2985/2020**

Sr. No.	Particulars	Details
1.	Name of the project	'Astaire Gardens', Sector 70A, Gurugram, Haryana.
2.	Unit no.	E-46-GF (Annexure R-11 on page no. 92 of the reply)
3.	Unit admeasuring	1090 sq. ft. (Annexure R-11 on page no. 92 of the 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	28.12.2012 (Annexure R-11 on page no. 84 of the reply)
6.	Possession clause	" <b>Clause 5.1-</b> Subject to Force Majeure, as defined in Clause 14 and further subject to the



		<p>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, <b>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").</b> 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</p>
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		DTCP under the Act in respect of the entire colony. <b>(Emphasis supplied)</b>
7.	Due date of delivery of possession	15.05.2016 (calculated from the date of sanction of building plan being later)
8.	Total sale consideration	Rs. 90,30,774/- {Annexure R-14 on page no. 133 of reply}
9.	Total amount paid by the complainant	Rs. 65,14,601.85/- (Annexure R-14 on page no. 133 of reply)
10.	Occupation certificate	19.09.2017
11.	Offer of possession	25.09.2017 (Annexure R-14 on page no. 131 of reply)
12.	Conveyance Deed	21.09.2018
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 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.
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### **B. Facts of the complaint**

The complainants have submitted as under:

9. That in the year 2011, the complainant was searching for a suitable flat/accommodations as per their standard and budget. The original allottees while searching for a home visited the office of the respondent company. The agents of the respondent company told the original allottees about the moonshine reputation of the company and the agents of the respondent company made huge presentations about their project namely Astaire gardens at sector 70A, Gurugram and also assured that they have delivered several projects in the national capital region. The respondent handed over one brochure to the original allottees which portrayed the project like heaven and tried to hold the original allottee interest in every possible way and incited the original allottees for payments.
10. That the complainant was subjected to unethical trade practice as well as subject of harassment in the name and guise of a biased, arbitrary and one-sided floor buyer's agreement. The respondent not only failed to adhere to the terms and conditions of the FBA dated 28.12.2012 but



also illegally extracted money from the original allottees by making false promises and statements.

11. That in 03.10.2011, the complainant who was caught in the web of false promises by the agents of the respondents filed an application form for one flat/unit and opted for construction linked payment plan and paid an initial booking amount of Rs. 6,00,000/- vide cheque no. 382184 dated 03.10.2011 drawn on State Bank of India, which was acknowledged by the respondent vide receipt no. 2011/1400025099.
12. That the respondent issued a provisional allotment letter dated 15.11.2011 allotting a flat bearing unit no. E-46-GF 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.6,594/- per sq. ft.
13. That the respondent sent one detailed FBA to the original allottees and requested for signing the agreement which was signed on 28.12.2012 and returned to the builder, wherein as per the clause 2.2 and 2.3 of 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 7,188,005/-, development charges of Rs. 288,000/-, club membership charges of Rs. 2,00,000/-, interest free maintenance charges (IFMS) @ Rs. 50 sq. foot and power backup installation charges of Rs 20,000/- per KVA.
14. That as per the demands raised by the respondent, based on the payment plan, the complainant paid a sum of Rs. 8,507,011/- towards the said plot against total net cost of Rs 9,283,538/- till 2020.
15. It is very unfortunate that the complainant had become helpless and had to run from pillar to post for the possession of their flat though they

- had made payment of the agreed amount/consideration as per the construction linked plan attached to the buyer's agreement.
16. That it is quite clear that the respondent is involved in unethical/unfair practices so as to extract money from the complainant despite the fact that the project has not been completed and the respondent was capriciously involved in demanding money illegally from the complainant.
  17. That the respondent sent a letter cum invoice no. BPTP/134492/1503 dated 25.09.2017 for offer of possession for unit no. E-46-GF with demand of Rs. 2,341,772/- wherein a demand for the basic sale price of Rs. 7,361,441/-, EDC/IDC charges of Rs. 287,999/-, club membership charges of Rs. 200,000/-, cost escalation charges of Rs 381,674/- , STP and electrification charges of Rs 161,224/- , VAT of Rs. 65,522/- and GST of Rs. 225,820/- were also raised.
  18. That the respondent builder obtained the occupation certificate on 19.09.2017 and offered possession on 25.09.2017. It is to be noted that conveyance deed was executed on 21.11.2018 and conveyance deed is formal expression of transfer of right and given the guarantee no lean on property does not mark an end to the liabilities of a promoters under RERA Act towards allottee.

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

19. The complainants have sought following relief(s):
  - i. 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.



- 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-N.
  - 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-O.
  - iv. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-P.
  - v. Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof.
  - vi. Direct the respondent to refund the FD of Rs. 2,60,000/- collected towards any demand raised by the government regarding VAT issues
  - vii. 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.
  - viii. Direct the respondent to refund the amount collected towards STP charges of Rs. 125,896.68/- when the FBA did not carry any such condition.
20. 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:**

21. It is submitted that the respondent upon completely of construction with regard to the project and upon receipt of occupation certificate dated 19.09.2017 from the concerned departments, issued offer of possession (OOP) letter on 25.09.2017. In terms of the said OOP the complainants were requested to complete documentary formalities/ pay all of previous dues. It is further stated that the complainants on adequate examination and analysis of the contents of the OOP letter dated 25.09.2017 and, being satisfied on account of investigation conducted with regard to allotted unit and, all other related aspects, have taken physical possession of the unit in question on 06.02.2018. Thereafter, the complainants further by virtue of incorporated clause/s and/or recital/s braced/recorded within the conveyance deed dated 21.11.2018, got the same executed/registered in their favour without any demur or protest.
22. That the complaint under reply is not maintainable in as much as the conveyance deed for the unit in question has been executed between the parties on 21.11.2018. It is stated that the possession of the unit in question is with the complainants, needless to say that the possession and conveyance deed is executed as and when there are no issues/dues/outstanding pending between the parties.
23. It is appropriate to state that the complainants have approached the Authority on the basis of the concocted and false allegations while distorting/misrepresenting the true, correct and actual material facts with a sole motive of harass and pressurize the respondent to succumb to the illegal demands of the complainants and, to tarnish the image and reputation of the respondent. The present complaint is mere arm-



twisting strategy and a planned move with an objective to burden the respondent with litigation, for some unknown extraneous considerations

24. All other averments made in the complaints were denied in toto.
25. 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.**

- i. 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.
- 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-N.
- 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-O.
- iv. Direct the respondent to refund the amount collected towards the escalation charges which is not payable as elaborated in para-P.



- v. Direct the respondent to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof.
  - vi. Direct the respondent to refund the FD of Rs. 2,60,000/- collected towards any demand raised by the government regarding VAT issues
  - vii. 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.
  - viii. Direct the respondent to refund the amount collected towards STP charges of Rs. 125,896.68/- when the FBA did not carry any such condition
26. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
27. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or

movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

28. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
29. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer - promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020*, the relevant paras are reproduced herein below:



- "34. The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.
35. The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."
30. The authority has already taken a view in in **Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never



gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

31. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

### **F.I Delay Possession Charge**

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

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

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

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

33. Clause 5 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

- (i) *"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 instalment 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..."*

34. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
35. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of sanction of the building plan or execution of floor buyer's agreement, whichever is later. The buyer's agreement was executed on 28.12.2012 and date of sanctioning of building plan is 15.05.2013. So, the due date is calculated from the date of sanctioning of building plan i.e., 15.05.2013 which comes out to be 15.05.2016 being later. Further, it was provided in the floor buyer's agreement that promoter shall be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondent is claiming this grace period of 180 days



for filing and pursuing of occupation certificate. There is no material evidence on record that the respondent-promoters had completed the said project within this span of 36 months and had started the process of issuing of the occupation certificate. As a matter of fact, the promoter neither obtained the occupation certificate nor offered the possession within the time limit prescribed by him in the floor buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

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

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

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

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

37. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

38. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
39. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

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

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

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

40. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
41. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement or



sanctioning of building plan whichever is later. For the reasons quoted above, the due date of possession is to be calculated from the date of sanctioning of building plan i.e., 15.05.2013 and the said time period of 36 months has not been extended by any competent authority. Therefore, the due date of possession is calculated from the date of sanctioning of building plan and the said time period of 36 months expired on 15.05.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above.

42. The respondent has obtained the occupation certificate on 19.09.2017. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 31.01.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.12.2012 to hand over the possession within the stipulated period.
43. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 19.09.2017. The respondent offered the possession of the unit in question to the complainant only on 25.09.2017. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to



arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 15.05.2016 (calculated from the date of sanctioning of building plan) till the date of offer of possession (25.09.2017) plus two months i.e., 25.11.2017. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

44. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 15.05.2016 till the date of offer of possession (26.09.2017) plus two months i.e., 26.11.2017; as per provisions of section 18(1) of the Act read with rule 15 of the Rules

**F.II: Other Reliefs:**

45. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST & VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges were involved in all similar cases and others pending against the respondent in this project as well as in other projects developed by them, vide orders dated 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA



and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee and a report was submitted and the same along with annexures was uploaded on the website of the authority.

#### **F.II (a) Cost escalation**

46. The complainant has pleaded that the respondent also imposed escalation cost Rs. 381,674/-. The respondent in this regard took a plea that cost escalation was duly agreed by the complainant at the time of booking and the same was incorporated in the FBA. The authority has gone through the report of the committee and observes that the cost escalation should be allowed up to the deemed date of possession i.e., 36 months from the date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later i.e., 03.05.2013, or up to the actual date of the offer of possession i.e., 2016. As most of the complainant paid a major part of the sale consideration and there was no default on the part of the complainant in making payment to the promoter. The project has been delayed by over 1 years for no fault on the part of the complainant. It is, therefore, fair, and just that the cost escalation, should be calculated only from the date of sanctioning of the building plan or execution of the floor buyer's agreement, whichever is later i.e., 03.05.2013 up to the deemed date of delivery of possession i.e., 03.05.2016, or up to the grace period i.e., 03.11.2016. No escalation in cost can be allowed after 03.05.2016 because no justifiable reason has been cited or explanation offered by the respondent for such inordinate delay in offering the possession to the complainant. The authority concurs with the findings of the committee and allows



escalation cost of Rs. 233.32/- per sq. feet is to be allowed instead of Rs. 332.18/- demanded by the developer.

### F.II (b) HVAT & GST.

47. The allottees have also challenged the authority of the respondent builder to raise demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondent had raised a demand of Rs. 225,820/- under the head GST which is illegal and is not liable to repeat to be paid by him.
48. Though the version of respondent is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

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



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

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

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

50. In appeal no. 21 of 2019 titled as *M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi*, Haryana Real Estate Appellate Tribunal, Chandigarh has upheld the *Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.* (supra). The relevant para is reproduced below:



"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."

51. In the present complaint, the due date of possession was prior to the date of coming into force of GST i.e., 01.07.2017. In view of the above, the authority is of the view that the respondent/promoter is not entitled to charge GST from the complainant/allottees as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and service tax as detailed in para 48 of this order.
52. It is contended on behalf of complainant that the respondent raised an illegal and unjustified demand towards VAT to the tune of Rs. 65,522/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottees agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.



53. The committee took up this issue while preparing report and after considering the submissions made on behalf of the allottees as well as the promoter, observed that the developer is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme. The same is concluded in the table given below:

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

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

#### **F.II (c) Club membership charges.**

55. It was contended by the complainant that the respondent has charged a sum of Rs. 2,00,000/- of club membership charge in its letter for offer of possession despite the fact that the construction of the club has not been completed till date. Further, in plethora of judgements of various



RERA Authorities; it has been held that the club membership charges cannot be imposed on the allottees till the time the club is not completed and becomes functional. On the other hand, respondent denied that the construction of club has not finished. The respondent has been raising demands as per its whims and fancies.

56. The said issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

*"...After deliberation, it was agreed upon that club membership will be optional.*

*Provided if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.*

*In view of the consensus arrived, the club membership may be made optional. The respondent may be directed to refund the CMC if any request is received from the allottee in this regard with condition that he shall abide by the above proviso."*

57. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/.

#### **F.II (d) STP Charges**

58. It was contended by the complainant, on 25.09.2017, the respondents issued an offer of possession letter to the complainant along with various unjust and unreasonable demands electrification and STP charges of Rs. 125,896/-. On the other hand, the respondent submitted



that such charges have been demanded by the allottees in terms of the flat buyer's agreement.

59. The authority concurs with the recommendation made by the committee and holds that the existing population of the colony is around 1500 persons, which is about 10% of the total population of the colony. The present discharge is around 170 KLD and the respondent company has set up two STPs, each 100 KLD capacity to treat the present sewage load. It has been taking NOC from HSPCB regularly. Hence, the technical reason given by the respondent company to install a single STP of 1330 KLD once the 30% of the total load is achieved for establishing a full capacity STP (1330 KLD) appears genuine. However, the respondent may be directed to keep upgrading the existing STPs in commensurate with the increasing sewage load till the desired level of sewage load is achieved for establishing the main STP for the entire colony.

**G. Directions of the authority**

60. Based on above determination of the authority and acceptance of report of the committee, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. **(a) Delay Possession Charge:** The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 15.05.2016 till offer of possession i.e., 25.09.2017 till plus two months i.e., 25.11.2017 to the complainant(s) as per section 19(10) of the Act.



- ii. (b)The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. (c)The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- iv. (d)The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. (e)The respondent is also directed not to charge anything which is not part of buyer's agreement.
- vi. **Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if the allottees opt out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.
- vii. **GST charges:** The due date of possession of the subject unit is prior to the date of coming into force of GST i.e.

01.07.2017. The authority is of the view that the respondent/promoter was not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements as has been held by Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi. Also, the authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoters are entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed mention in the committee report.

viii. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

61. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
62. Complaints stand disposed of.
63. Files be consigned to registry.

  
**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 09.08.2023**