

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainants 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 75-89, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	PE-177-GF, admeasuring 1510 sq. ft., Ground Floor
6.	Date of floor buyer agreement	05.03.2012



7.	Due date of possession	05.03.2014
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 or sanction of building plan, whichever is later. 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.	Basic sale consideration	₹ 18,96,969/-
10.	Amount paid by complainant	₹ 20,70,215.83/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainants had booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in the year 2009. Vide allotment letter dated 06.10.2011, complainants were allotted unit bearing no. PE-94-GF, measuring 1025 sq.ft , a copy of which is annexed as Annexure C-2. A

floor buyer agreement was executed between both the parties on 05.03.2012 in respect of the allotted unit, a copy of which is annexed as Annexure C-3. The basic sale price of the unit was fixed at ₹ 18,96,969/- against which the complainant has paid a total amount of ₹ 20,70,215.83/- till date. 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 or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. 24 months from the date of execution of the agreement, the deemed date of possession works out to 05.03.2014. However, respondent failed to offer possession within the time period stipulated in the agreement.

4. It is submitted that the complainants have never defaulted in making payment towards any instalment as per the demand raised by the respondents from time to time. The copies of the demand/payment request issued by the respondents have been annexed herewith as Annexure C-5. Complainants have already made payment of the entire sale consideration and therefore had no other option than to place reliance on the words of the respondent. Further from booking of the unit till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable


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control of the respondents and has led to delay in completion and development of the project within the time stipulated.

5. The respondents were bound by the provisions and terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects. It is submitted that even after a lapse of more than nine years from deemed date of delivery of possession, respondents are not in a position to offer possession of the booked unit to the complainants.
6. That the arbitrariness of the floor buyers agreement dated 05.03.2012 can be derived from the clauses 7.1 and 5.3, according to which in case of delay in construction and development, the respondents had made the provision of only Rs 5 per sq of the super built up area per month as compensation to the purchaser in the agreement whereas in case of delay in payment of instalments by complainant, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainant is aggrieved by such unilateral construction of the agreement as Rs 5 per sq ft is 2-3% and is thus too less compared to the exorbitant 18% rate of interest.
7. It is further stated that till date, the respondents have neither provided possession of the flat nor refunded the deposited amount along with



interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

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

- i. Direct the respondent to deliver immediate possession of the unit PE-94-GF admeasuring 1025 sq ft, BPTP Park Elite floors, Parklands Sector-84, Faridabad after due completion and receipt of occupancy certificate along with all the promised amenities and facilities and to the satisfaction of the complainant;
- ii. Direct the respondents to pay prescribed rate of interest as per the RERA Act, on the amount already paid by the complainant from the promised date of delivery i.e 28th December 2014 till the actual physical and legal delivery of possession; and
- iii. Pass an order restraining the respondents from charging any amount from the complainant which do not form part of the floor buyers agreement dated 05.03.2012 and/or is illegal, and arbitrary .



- 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 the course of hearing, learned counsel for complainants submitted that as per the information available with his client, the unit of the complainants has not received occupation certificate. The complainants are willing to stay with the project and wait for grant of occupation certificate. Complainants will accept possession of the unit after receipt of occupation certificate from the concerned department along with delay interest for delay caused in offering possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

10. Learned counsel for the respondent filed detailed reply on 05.06.2023 pleading therein:
11. That the unit in question was booked by the complainants in the year 2009. On 06.10.2011, respondent duly allotted a unit bearing no. PE-94-GF on the ground floor to the complainants. That thereafter a floor buyer agreement was executed between both the parties on 05.03.2012. It is stated that in terms of clause 5.1 of said floor buyer agreement dated 05.03.2012 respondent proposed to handover the possession of the unit within a period of 24 months from the execution of floor buyer agreement

or sanction of building plan, whichever is later along with a grace period of 180 days for filing and grant of occupation certificate.

12. That builder buyer agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

13. It is submitted with regard to the delay in offering possession of the unit in question, that the project in question was to be developed under self certification policy issued by DTCP, Haryana. In accordance with the the policy, respondents submitted detailed drawings and design plans for relevant buildings along with requisite fees. The respondents applied for approval of building plans and initiated development/construction work. The building plans were with held by the DTCP, Haryana. Although no objection was received from the department, however, to ensure smooth function respondent again applied for approval of building plans under regular scheme for sanctioning too. That the department vide its order dated 08.07.2015 issued clarification with regard to self certification policy but did not formally release all the plan submitted by the respondents in various building plans approval scheme. That the delay in offering possession of the allotted unit to the complainants have been occasioned due to inaction of the government agencies, hence it should be

inferred that any delay caused was due to force majeure beyond reasonable control. It is also submitted that meanwhile respondents carried on the construction of the project and informed the complainants of same by issuing regular construction linked payment demands along with uploading of photographs on the website of respondent.

14. Further, when the construction of the project was going on, 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 etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondents, the construction got delayed.

15. During the course of hearing, learned counsel for the respondents submitted that the respondents are not in a position to issue a valid offer of possession as the unit in question is yet to receive occupation certificate. If the complainants are willingly to wait for the occupation

certificate, then respondents will issue an offer of possession to the complainants after receipt of the same.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection regarding execution of BBA 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, has to decide 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 builder buyer agreement is admitted by the respondent. Said builder 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 Objection raised by the respondent regarding with regard to deemed date of possession .

As per clause 5.1 of the floor buyer agreement dated 05.03.2012 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority.


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24 months from the date of execution of the agreement, the deemed date of possession works out to 05.03.2014. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. Further, respondent has failed to place on record any document to show/prove as to what was the exact date for sanction of the building plans, thus the date of execution of the builder buyer agreement is taken as the date for calculating the deemed date of possession. 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. It is a matter of fact, that 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

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construction works within 24 months. Thus, the period of 24 months expired on 05.03.2014. 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.

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

The due date of possession in the present case as per clause 5.1 is 05.03.2014, 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 non approval of building plans by the concerned department, NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period etc.



In its reply, respondents have taken plea of the fact that the building plans submitted by the respondents were not approved by the concerned department as late as till 2015, because of which the construction of the project got delayed. It is alleged by the respondents that the building plans were withheld by the DTCP, Haryana without any further clarification. With regard to the delay in approval of building plans, it is observed that the respondents have failed to place on record copies of any official communication with the concerned department in respect of approval of building plans. It has merely been mentioned that the building plans were applied with the concerned department and are still pending approval. As a matter of fact, respondent had started accepting booking of units qua the project in question in the year 2009 itself. Thereafter, the floor buyer agreement had also been executed in the year 2012. Whereas, the respondent had only applied for approval of building plans in the year 2014. There is a delay of nearly five years in applying for the same, the reason for which respondent has failed to mention. It is further submitted by the respondents that throughout this period of grant of approval of building plans, respondents were already carrying out construction activities at the site of the project and accordingly



raised demands for the same from the complainants. In these circumstances, the plea of the respondent with respect to delay in approval of building plans as force majeure condition cannot be accepted. Further, the remaining pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession i.e 19.06.2015. 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 2015 and the NGT order referred by the respondent pertains to year 2016 i.e post the deemed date of possession, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse



for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

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.

16. Admittedly in present complaint, a unit had been booked in the project of the respondent namely 'Park Elite Floors' situated at Sector 75-89, Faridabad, Haryana in the year 2009. Vide allotment letter dated 06.10.2011 complainants were allotted unit no. PE-94-GF, measuring 1025 sq.ft Ground Floor. A builder buyer agreement was executed between both the parties with respect of the allotted unit on 05.03.2012. As per clause 5.1 of the agreement and the observations as recorded in subheading 'E-II' of this order, possession of the unit should have been delivered by 05.03.2014. 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. Learned counsel for respondent orally submitted during hearing proceedings that the respondent company is yet to receive occupation certificate in respect of the unit of the complainant. Complainants are willing to wait for possession of the unit till the receipt of occupation certificate and are further claiming delay interest for the delay caused in delivery of possession.

17. The facts set out in the preceding paragraph demonstrate that construction of the project has been delayed beyond the time period stipulated in the buyer's agreement. The Authority observes that the respondent has failed to fulfil its obligation stipulated in floor buyer agreement dated 05.03.2012. Possession of the unit should have been delivered by 05.03.2014. Now, even after a lapse of 8 years, respondents are not in a position to offer possession of the unit since the unit has yet to receive occupation certificate. Fact remains that respondents in its written statement have not specified a timeline as to when possession of the booked unit will be offered to the complainants. Complainants, however, do not wish to withdraw from the project and are rather interested in getting the possession of their unit complete in all respects along with occupation certificate. Learned counsel for the complainant has clearly stated that complainants are ready to wait for possession of unit after completion of construction and receipt of occupation certificate. In these circumstances, the provisions of Section 18 of the Act clearly



come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondents in this case have not made any offer of possession to the complainants till date. So, the Authority hereby concludes that the claimants are entitled for the delay interest from the deemed date i.e, 05.03.2014 up to the date on which a valid offer is sent to them after 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

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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”..”

18. 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. 07.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
19. Hence, Authority directs respondents to pay delay interest to the complainants 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 10.75% (8.75%

+ 2.00%) from from the due date of possession i.e 05.03.2014 till the date of a valid offer of possession.

20. Authority has got calculated the interest on total paid amount from due date of possession i.e 05.03.2014 till the date of this order i.e 07.12.2023 which works out to ₹21,66,329/- and further monthly of ₹ 18,292/- 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 07.12.2023 (in ₹)
1.	20,49,275.83/-	05.03.2014	21,51,669/-
2.	20,940/-	05.06.2017	14,660/-
Total:	20,70,215.83/-		21,66,329/-
Monthly interest:	20,70,215.83/-		18,292/-

21. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 20,70,215.83/- as per the receipts annexed in the complaint filed. Said amount has also been admitted to having been received by the respondents vide statement of account dated 04.05.2022. However, out of said amount complainant has paid an amount of ₹ 19,98,015/- and has received a credit of ₹ 72,200.45/- as timely payment discount. As a benefit, the said discount was credited towards the total sale consideration made by the complainants and was an essential component in determining the balance payable amount. Perusing the



receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainants. Although it is true that this discount is an act of good will on the part of the respondent but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainants cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.

F. DIRECTIONS OF THE AUTHORITY

22. 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 shall issue an offer of possession to the complainants within a period of one month from the date of receipt of occupation certificate. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the

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complainants on account of delay caused in delivery of possession.

(ii) Respondent is directed to pay upfront delay interest of ₹21,66,329/- (till date of order i.e 07.12.2023) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 18,292/- (admissible from 08.12.2023 till the date of offer of possession after receipt of occupation certificate).

(ii) Complainants are directed to accept the offer of possession issued by the respondent and take physical possession within a period of two months from said date. Complainants will remain liable to pay the balance consideration amount to the respondent at the time of possession offered to them.

(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, 10.75% 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 complainants which is not part of the agreement to sell.

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



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NADIM AKHTAR
[MEMBER]



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DR. GEETA RATHEE SINGH
[MEMBER]