



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| | |
|-------------------------|--------------|
| Complaint no.: | 2844 of 2022 |
| Date of filing.: | 31.10.2022 |
| First date of hearing.: | 14.03.2023 |
| Date of decision.: | 20.09.2023 |

Bikash Banerjee S/o Anthony Banerjee
R/o Flat no. 380, Shree Awas Apartments,
Sector 18 B, Dwarka, Kakrola, Delhi-110078

....COMPLAINANT

VERSUS

1. M/s BPTP Limited
28 ECE House, 1st Floor, KC Marg, New Delhi, 110001

....RESPONDENTS

2. M/s BPTP Parkland Pride Limited
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

| | |
|-------------------------|--------------|
| Complaint no.: | 2845 of 2022 |
| Date of filing.: | 31.10.2022 |
| First date of hearing.: | 14.03.2023 |
| Date of decision.: | 20.09.2023 |

Mohit Sharan S/o K. M Sharan
R/o Flat no. 18 B, Classic Apartments, Sector 22
Plot 11, Dwarka, New Delhi-110075

....COMPLAINANT

VERSUS

Rathore

1. M/s BPTP LimitedRESPONDENTS
28 ECE House, 1st Floor, KC Marg, New Delhi, 110001
2. M/s BPTP Parkland Pride Limited
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

CORAM: **Dr. Geeta Rathee Singh** **Member**

Nadim Akhtar **Member**

Present: - Mr. Arjun Kundra, Counsel for the complainant
 through VC (in both complaints)
 Mr. Hemant Saini, Counsel for the respondents
 (in both complaints).

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Both captioned complaints are taken up together for hearing as they involve the same issues pertaining to the same project and against the same respondent only. This order is passed taking complaint no. 2844 of 2022 titled Bikash Banerjee vs M/s BPTP Limited and anr as lead case and facts are being taken for Complaint no. 2844 of 2022.
2. Complaint no. 2844 of 2022 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention



of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

3. 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-155-GF, admeasuring 1510 sq. ft., Ground Floor |
| 6. | Date of floor buyer agreement | 05.11.2012 |
| 7. | Due date of possession | 05.11.2014 |
| 8. | Possession clause in BBA (Clause 5.1) | 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 |

| | | |
|--|--|---|
| | | <p>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 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</p> |
|--|--|---|



| | | |
|-----|----------------------------|--|
| | | 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 | ₹ 27,79,101.72/- |
| 10. | Amount paid by complainant | ₹ 28,71,182.46/- |
| 11. | Offer of possession. | None |

B. FACTS OF COMPLAINT NO. 2844 of 2022 AS STATED IN THE COMPLAINT

4. Facts of complaint are that the complainant 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 24.12.2009, complainant was allotted unit no. L-52, measuring 1418 sq. ft. Ground Floor, Park Elite Floors, Parklands, Faridabad. A copy of the allotment letter issued by the respondent is placed at page 36 of the complaint file. However, after a gap of three years, respondent unilaterally shifted the unit of the complainant from unit no. L-52 and allotted a different unit bearing no. PE-155-GF, measuring 1510 sq.ft vide

re-allotment letter dated 31.05.2012, a copy of which is annexed as annexure C-2, in complaint file It is submitted that the re-allotment of the unit was solely attributable to the respondents as the complainant never intended to change the unit. A floor buyer agreement was executed between both the parties on 05.11.2012 in respect of the re-allotted unit bearing no. PS-155-GF. The basic sale price of the unit was fixed at ₹ 27,79,101.72/- against which the complainant has paid a total amount of ₹ 28,71,182.46/- 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 05.11.2014. However, respondent failed to offer possession within the time period stipulated in the agreement.

5. It is submitted that the complainant has never defaulted in making payment towards any instalment as per the demand raised by the respondents from time to time. Further that 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 control of the respondents and has led to delay in completion and development of the project within the time prescribed.

6. 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 ten years from deemed date of delivery of possession, respondent is not in a position to offer possession of the booked unit to the complainant.
7. That in case of delay in construction and development, the respondent had made the provision of only Rs 5 per sq of the super built up area per month as compensation to the purchaser in the 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.
8. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with

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

C. RELIEF SOUGHT

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

- i. Direct the respondent to deliver immediate possession of the unit PE-155-GF admeasuring 1510 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 does not form part of the floor buyers agreement dated 05.11.2012 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.

10. During the course of hearing, learned counsel for the complainant submitted that as per the information available with his client, the unit of the complainant has not received occupation certificate. The complainant is willing to stay with the project and wait for grant of occupation certificate. Complainant 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. Learned counsel further submitted that complainant in present complaint has received a timely payment discount of ₹ 1,01,323.15/- from the respondent for making timely payment of instalments. This amount of ₹ 1,01,323.15/- has been credited by the respondent towards the total payment made for the booked the unit. Complainant had made the requisite payments on time to avail the said discount from the respondent and receive benefit towards the sale consideration. The total amount of ₹ 28,71,182.46/- paid by the complainant to the respondents towards the booked unit is inclusive of ₹ 1,01,323/- and respondents has also acknowledged the same. Therefore he prayed that the total amount paid

by the complainant for the purpose of calculation of delay interest be considered as ₹ 28,71,182.46/- only.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. Learned counsel for the respondent filed detailed reply on 05.06.2023 pleading therein:
12. It is submitted that the unit in question was booked by the complainant on 30.05.2009. On 24.12.2009, respondent duly allotted a unit bearing no. L52-GF on the ground floor to the complainant. That since, at the time of allotment of the unit to the complainant, the layout plan was tentative, thus later with the consent and at the request of the complainant, the unit of the complainant was changed from L52-GF to unit no. PE-155-GF admeasuring 1510 sq. ft. That the complainant had opted for a construction linked payment plan. As per the payment plan, respondents had raised various demands, vide demand letters issued from 2009 till 2017, to the complainant. Copies of the demand letters and receipts of the amount paid by the complainant have been placed in the reply. It has been specifically mentioned that the respondents had given a timely payment discount to the complainant. Complainant has availed a total timely payment discount to the tune of ₹ 1,01,323.15/-.
13. Respondent has admitted allotment and execution of floor buyer agreement in favour of complainant. It is stated that in terms of floor

buyer agreement dated 05.11.2012 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.

14. Construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority 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. 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.

16. During the course of hearing, learned counsel for the respondent submitted that the respondent is not in a position to issue a valid offer of possession as the unit in question is yet to receive occupation certificate. If the complainant is willingly to wait for the occupation certificate, then respondent will issue an offer of possession to the complainant after receipt of the same. He further argued that the total amount received by the respondent in respect of the unit in question is only ₹ 27,69,859.31/- which is excluding the timely payment discount of ₹ 1,01,323.15/- . The timely payment discount offered by the respondent on payments made within the time frame is a genuine act of good will on the part of the respondent and the same should not be considered as a part of total payment made by the complainant. The delay interest admissible to the complainant should only be calculated on the actual paid amount excluding the timely payment discount as the same is not actual money which has been utilised by the respondent.


Rathee

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 respondents 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, respondents has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into

force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

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

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the



Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of 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 05.11.2012 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.

24 months from the date of execution of the agreement, the deemed date of possession works out to 05.11.2014. 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, the respondent in its reply has not denied that the sanction of building plan was post the date of execution. Thus the date for execution of floor buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. Since; the later milestone for possession i.e. sanction of building plan is vague, ambiguous and arbitrary, the date of execution of floor buyer agreement is taken as the date for calculating the deemed date of possession. As a matter of fact, the promoter did not apply to the concerned Authority for

obtaining completion certificate/occupation certificate within the time limit prescribed by the respondents/promoters in the floor buyer agreement i.e immediately after completion of construction works within 24 months. Thus, the period of 24 months expired on 05.11.2014. 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 05.11.2014, 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 respondents or not. The obligation to deliver possession within a period of 24 months from builder buyer agreement was not fulfilled by respondents. There is delay on the part of the respondent and the various reasons given by the

respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

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

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



The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

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

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

E.IV Objection raised by the respondents regarding consideration of timely payment discount at the time of calculation of interest.

Complainant in this case had booked unit in the project of the respondent in the year 2009 for a total sale consideration of ₹ 27,79,101.72/- against which the complainant has claimed to have paid an amount of ₹ 28,71,182.46/-. Upon perusal of receipts it is observed that out of said amount, complainant

has actually paid an amount of ₹ 27,69,859.31/- and has received a credit of ₹ 1,01,323.15/- from the respondent as timely payment discount for making scheduled payments on time. This facility has been provided by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. Now it is the contention of the respondents that timely payment discount offered by the respondents on payments made within the time may not be considered as part of the actual payment for the purpose of calculation of interest admissible to the allottees. Whereas, it has been argued by the learned counsel for the complainant that the amount in respect of the timely payment discount as been credited towards the total payment made for the booked the unit as a policy by the respondents company. Even in the receipts it has been made part of the total payment made therefore, it should be considered as part of the total payment made towards the unit and complainant should be allowed interest over the same.

The main point of contention between both the parties is with regards to admissibility of interest to the complainant for the

amount credited as timely payment discount. Upon bare perusal of the various demand letters issued by the respondent, it is observed that vide said demand letters respondent has time and again raised demand from the complainant towards payment of balance sale consideration. In said demand letters it has been specifically mentioned by the respondent builder that complainant will receive a timely payment discount if a payment is made within the time frame mentioned in the demand letter. Taking demand letter dated 19.12.2013, placed at page 90 of the complaint, under observation; in said letter respondent has raised a demand of ₹ 3,76,871.84/-. In said letter it has been clearly mentioned that in order to avail timely payment discount of ₹ 13,745.19/-, complainant has to clear the total dues of ₹ 3,63,126.05/- on or before 03.01.2014. Upon making payment of ₹ 3,63,126.05/- within the requisite time frame, complainant received the promised timely payment discount of ₹ 13,745.19/- and received a receipt dated 26.12.2013 for full amount of ₹ 3,76,871.84/-, a copy of which is placed at page 83 of the complaint. From these documents placed on record, it can be deduced that the respondent company used the payment method of timely payment discount

as a company policy to ensure payment from the allottees within the requisite time frame. As a benefit, the said discount was credited towards the total sale consideration made by the complainant 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 complainant. 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 complainant 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.

17. Admittedly, complainant in this case had booked a unit in the project of the respondent in the year 2009. Vide allotment letter dated 24.12.2009 complainant was allotted unit no. In this case a unit, measuring 1418 sq. ft. Ground Floor, however, it is alleged by the complainant that the unit

was unilaterally shifted by the builder-respondent to a different unit bearing no. PE-155-GF, measuring 1510 sq.ft vide re-allotment letter dated 31.05.2012. A builder buyer agreement was executed between both the parties with respect to the re-allotted unit i.e PE-155-GF on 05.11.2012. Although in the complaint file, complainant has alleged this re-allotment of the unit as unilateral and arbitrary but it has not been challenged by the compliant in the prayer clause and neither pressed upon during the proceedings. The complainant had voluntarily signed the builder buyer agreement for the re-allotted unit i.e PE-155-GF and has filed present complaint specifically seeking possession of the same , therefore, the complaint is being proceeded with regards to possession of unit bearing no. PE-155-GF.

18. 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 05.11.2014. It is an admitted fact that the delivery of possession of the unit has been delayed by the respondent by more than 7 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. Complainant is willing to wait for possession of the unit till the receipt of



occupation certificate and is further claiming delay interest for the delay caused in delivery of possession.

19. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement. The Authority observes that the respondent has failed to fulfil its obligation stipulated in BBA dated 05.11.2012. Possession of the unit should have been delivered by 05.11.2014. Now, even after a lapse of 7 years, respondent is not in a position to offer possession of the unit since respondent company has yet to receive occupation certificate in respect of the unit. Fact remains that respondent in his written statement has not specified as to when possession of booked unit will be offered to the complainant. Complainant, however, does not wish to withdraw from the project and is rather interested in getting the possession of his unit. Learned counsel for the complainant has clearly stated that complainant is ready to wait for possession of unit after completion of construction and receipt of occupation certificate. In the 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 respondent in this case has not made



any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e, 05.11.2014 up to the date on which a valid offer is sent to him 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 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”..”

20. 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. 20.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
21. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from from the due date of possession i.e 05.11.2014 till the date of a valid offer of possession.



22. Authority has got calculated the interest on total paid amount from due date of possession till the date of this order i.e 20.09.2023 in respective complaints as mentioned in the tables below:

Complaint no. 2844 of 2022:

| Sr. No. | Principal Amount (in ₹) | Deemed date of possession or date of payment whichever is later | Interest Accrued till 20.09.2023 (in ₹) |
|--------------------------|-------------------------|---|---|
| 1. | 25,28,779.27/- | 05.11.2014 | 24,14,569/- |
| 2. | 26,039/- | 08.12.2016 | 19,004/- |
| 3. | 3,16,364.19/- | 11.10.2017 | 2,02,285/- |
| Total: | 28,71,182.46/- | | 26,35,858/- |
| Monthly interest: | 28,71,182.46/- | | 25,369/- |

Complaint no. 2845 of 2022:

| Sr. No. | Principal Amount (in ₹) | Deemed date of possession or date of payment whichever is later | Interest Accrued till 20.09.2023 (in ₹) |
|--------------------------|-------------------------|---|---|
| 1. | 24,39,494.23/- | 15.10.2014 | 23,44,404/- |
| 2. | 3,45,380/- | 20.03.2018 | 2,04,562/- |
| Total: | 27,84,874.23/- | | 25,48,966/- |
| Monthly interest: | 27,84,874.23/- | | 24,606/- |



F. DIRECTIONS OF THE AUTHORITY

23. 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) In Complaint no. 2844 of 2022, respondent is directed to pay upfront delay interest of ₹ 26,35,858/- (till date of order i.e 20.09.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 25,369/- till the offer of possession after receipt of occupation certificate.

(ii) In Complaint no. 2845 of 2022, respondent is directed to pay upfront delay interest of ₹ 25,48,966/- (till date of order i.e 20.09.2023) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 24,606/- till the offer of possession after receipt of occupation certificate.

(iii) Complainant, in respective complaints, will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her.


P. Rathore

(iv) 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.

(v) The respondent shall not charge anything from the complainant, in respective complaints, which is not part of the agreement to sell.

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



.....
NADIM AKHTAR
[MEMBER]



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