

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

Complaint no.	:	416 of 2022
Date of order	:	31.05.2024
Lalit Kumar R/o - 122, Summerwalk, PI, Nepean, ON, K2G 5Y5, Canada		Complainant
Versus		
BPTP Ltd., R/o: - M-11, Middle Circle, Connaught Circus, Delhi - 110001		Respondent
CORAM:		
Shri Sanjeev Kumar Arora		Member
APPEARANCE:		
Mr. Pradeep Aggarwal (Advocate)		Complainant
Mr. Harshit Batra (Advocate)		Respondent

ORDER

1. The present complaint dated 31.01.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations,

responsibilities and functions under the provision of the act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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 tabular form:

S.N.	Particulars	Details	
1.	Name of the project	"Terra", Sector- 37-D, Gurugram	
2.	Nature of project	Group Housing Towers	
3.	RERA registered/not registered	Registered 299 of 2017 dated 13.10.2017	
4.	DTPC License no.	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
	Validity status	04.04.2025	23.10.2019
	Name of licensee	SUPER BELTS PVT. LTD and 3 others	COUNTRYWIDE PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres	19.74
5.	Unit no.	T-21-404, Tower 21 [As per page no. 90 of reply]	
6.	Unit measuring	1998 sq. ft. [As per page no. 90 of reply] 2191 sq. ft.	

		[As per page no. 162 of reply]
7.	Date of execution of Flat buyer's agreement	07.12.2012 (As per page no. 85 of reply)
8.	Date of building plan	21.09.2012 (As stated by respondent)
9.	Possession clause	<p>5. Possession</p> <p>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within e Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</p> <p>1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), Stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of</p>

		<i>the building plan or execution of Flat Buyer's Agreement, whichever is later.</i>
10.	Due date of possession	07.12.2016 (calculated from the date of execution of buyer's agreement, being later)
11.	Basic Sale Price	Rs. 1,04,89,500/- [as per page no. 91 of reply]
12.	Total amount paid by the complainant	Rs. 1,28,07,744/- (as per SOA dated 18.01.2018 - page 65 of complaint)
13.	Occupation certificate dated	09.12.2021 (Page 160 of reply)
14.	Offer of possession	13.12.2021 (as per page no. 162 of reply)
15.	Grace period	Grace period is allowed as clause is unconditional

B. Facts of the complaint

- I. The complainant had visited the respondent's office, its staff assured and represented that being a developer of repute and conducting ethical business, it shall adequately compensate him in case the project was delayed for any reason. He, believing such promises and set of promises and commitments, booked and invested in the apartment/flat.
- II. That pursuant to this nefarious proposition and to entrap him, the respondent consequently, proceeded to formalise their plan by

generation of an 'allotment letter' dated 07-12-2012 wherein he was allotted the residential apartment/flat "T-21-404" on 4th floor of Tower No.-T-21, Unit No.- 404", measuring 1998 Sq. Ft. (185.619 Sq. Mtr), in the project "Terra" at Sector-37-D, Gurugram, Haryana, the basis of calculation of area being the 'Super built-up area'. That, as a natural sequence in the purchase of the flat/apartment and consequent to the execution of the "allotment letter, on 07-12-2012 both the parties have executed and signed a one-sided "flat buyer's agreement" for the abovementioned residential unit initially under the "time/construction linked payment plan". The total cost of the said property is Rs. 1,29,96,541/- in addition to applicable govt. taxes.

- III. That, as per the account statement dated 18-01-2018, he has made timely, regular payments of all the instalments due to the respondent, without delay. He has paid almost 98.8% of the BSP and has also paid 100% of the all associated additional charges demanded/generated by the respondent under agreed upon payment plan, which is amounting to Rs. 1,28,07,744/-.
- IV. By virtue of clause 1.6 of the FBA page no.- 06 the possession of the booked unit was to be handed over to him within a period of 42 months with extra 180 Days (approx.06 months) grace period from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later. Therefore, by calculation, the possession of the apartment /flat was due on 07/12/2016 including extra 180 days grace period. The respondent has, evidencing and displaying gross incompetence and inability, failed to hand over the

possession of the completed apartment / flat to him on a committed, agreed upon timeline which the respondent had unilaterally set the timetable and completion of the project. He has never denied to pay the consideration as per payment plan. It may be brought to the kind attention of the Authority that the parties are bound by the terms and conditions so agreed between them and the set of duties and responsibilities as set out in the FBA.

- V. That the respondent has issued a letter dated 13-12-2021 to him for "offer of possession" of the unit in question, based upon in-principle approval of occupation certificate from the concerned authorities dated- 09-12-2021, with cost escalation and increased in super area by 193 sq.ft. without any increase in the carpet area, which has reasonably impacted the whole/ total cost of the unit.
- VI. That the cost of the unit has been increased by Rs. 21,12,571/- plus govt. taxes due to super area increased by the respondent. The details are below :

S.N	Heads	Cost increased by (Rs.)
01	Cost Escalation	Rs. 9,57,467/-
01	BSP	Rs. 10,13,250/-
02	PLC	Rs. 70,927/-
03	PBIC	Rs. 19,300/-
04	IFMS	Rs. 9,650/-
	Total cost escalation	Rs. 21,12,571/- + Govt. Taxes

- VII. That as per the section 14(2)(i) of RERA Act 2016 it's a legal duty of the respondent or promoter not to make any additions and

alterations in the sanctioned plan, layout plans and specifications in respect of the apartment without the previous consent of the allottee. The respondent has never informed or given any intimation to the allottee in this regard. It's a violation of the section 14 (2)(i) of RERA Act 2016. He has raised his protest to respondent regarding the increased in the super area vide mail dated 05-01-2022.

- VIII. That the respondent although has offered the possession of the unit to the complainant upon in-principle approval of occupation certificate received from the concerned authority but on site piles of rubble and mortar, bricks, construction material, incomplete buildings which were grossly unfit for habitation, the status of the project is not in proper habitable condition, the amenities which were promised by the respondent has not been delivered in complete till date. The club is not completely operational, part of the facilities are not yet started. In spite of delivering the facilities and proper amenities the respondent has raised unjustified charges on their "TAX INVOICE" dated 13-12-2021. Those charges are :

S.N	Descriptions	Charges
01	Admin charges	Rs. 14,000/-
02	Club usage charges	Rs. 12,000/-
03	Maintenance 13-04-2022 to 12.04.2024	Rs. 1,63,010/-

- IX. Since the project is not completed with all its amenities and features which had been promised to be delivered at the time of possession, the advance maintenance charges for 02-years in advance is completely unjust and unreasonable.

C. Relief Sought

3. This Authority may be pleased to direct the respondent as follows:

- a) Direct the respondent to offer possession of the unit complete in all respects.
- b) Direct the respondent to pay interest @ 18 % per annum on the amount deposited by him with the respondent for delay in possession;
- c) Direct the respondent to pay HVAT security.
- d) Direct the respondent to remove the super area increased by them unilaterally.
- e) Direct the respondent to remove the cost escalation (Rs.9,57,467/-) added in the total cost due to increased cost of construction.
- f) Direct the respondent to remove the charges implemented as 'Admin charges and Club usage charges' mentioned in "TAX INVOICE".
- g) Direct the respondent to remove the charges mentioned as 'Advance Maintenance charges' for 02-years.
- h) Direction to be given to removing the charges for "Electrification & STP Charges"

- i) Direct the respondent, to pay a sum of Rs. 50,000/- (Rupees Two Lakhs Only) to him towards litigation costs.

D. Reply by the respondent

- i. It is submitted that the respondent had diligently applied for registration of the project in question i.e., "Terra" located at sector 37D, Gurugram including towers-T-20 to T-25 & EWS before this Hon'ble Authority and accordingly, registration certificate No. 299 of 2017 dated 13.10.2017 was issued by this Hon'ble Authority.
- ii. That the construction of the unit of the complainant and tower where the same is located i.e. Tower T-21 has been completed by the respondent in terms of the FBA. Subsequently, an application for the grant of occupation certificate ("OC") has been applied by the respondent to the Department of Town and Country Planning ("DTCP"), Haryana, along with the following requisite reports. Then, on 09.12.2021, the respondent received the inprincipal approval from the office of Directorate of Town and Country Planning, Haryana, in respect of the Tower T20, T21, T24 & T25. Thereafter, the respondent issued the offer of possession letter dated 20.12.2021 in respect of the unit in question i.e. T21-404 having final area admeasuring to 2,191 Sq. Ft.
- iii. It is submitted that as evincing from the list of dates, he had on several occasions failed to make timely payments *qua* the demands raised by

the respondent. Hence, is in violation of the provisions of the Act of 2016. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, he is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the '*Doctrine of Aprobate & Reprobate*'. In this regard, the respondent reserves their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required. Therefore, in light of the settled law, the reliefs sought by him in the complaint under reply cannot be granted by this Hon'ble Authority.

- iv. It is submitted that as per clause-3 of the agreement titled as "Sale Consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC), preferential location charges (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (i.e. GST), electrification charges (EC), interest free maintenance security (IFMS), etc. shall also be payable by the complainant.
- v. That *vide* clause 4.1 (c) r/w 4.2 of the agreement dated 07.12.2012 the complainant agreed that super built up area of the unit is subject to +/- 15% variation/ alteration/ modification and in such case he is liable to pay BSP @ Rs. 5,250.00/- per sq. ft. along with the other charges in

- proportion to the increased super built up area. That the cost escalation charges if any, were to be ascertained and finalized at the time of offer of possession.
- vi. The total escalation has been calculated and explained in detail in Annexure "E" of the offer of possession dated 13.12.2021. That no cost escalation on labour has been taken to calculate the total escalation in the cost of construction.
- vii. That GST being indirect tax is payable by the end user / allottee as per GST regulations. Further, as per the term of the agreement dated 07.12.2012 the complainant have agreed to pay the statutory dues including the any fresh or enhanced incidence of tax or any other statutory charges etc. Moreover, the complainant *vide* clause 7 of the Affidavit further agreed to the same and stated that they have agreed to make the revised EDC and IDC, VAT, Maintenance Charges and security deposit and any fresh incidence of taxes/ service tax as may be levied by the Central Government/ Government of Haryana/ Competent Authority as and when demanded by the Respondents developer.
- viii. That the Project in question was launched by the Respondents in August' 2012. It is submitted that the construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government

- authority. *Vide* its order NGT placed sudden ban on the entry of diesel trucks of more than ten years old and directed that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly came of halt, after the lifting of the ban it took some time for mobilization of resources by various agencies employed with the Respondent.
- ix. Thereafter, the Environment Pollution (Prevention and Control) Authority, EPCA, imposed a ban on the construction activities within the Delhi-NCR region expressing alarm on severe air pollution level. The said ban was commenced from 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018.
- x. In 2019, the Hon'ble Supreme Court of India on 04/11/2019, in "M.C. Mehta v. Union of India" banned all the construction activities. The said ban was partially lifted by the Hon'ble Supreme Court on 09/12/2019 whereby relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm. whereas the complete ban was lifted by the Hon'ble Apex Court on 14/02/2020.
- xi. Thereafter the construction of the unit was going on in full swing and the Respondents were confident to handover possession of the unit in question as per the terms of the agreement. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past more than 2 years all the activities across the country including the

constructions of the projects came to a halt. Initially, the Government of India announced the countrywide lockdown from 24.03.2020 till the further orders. Which was subsequently extended to 31.05.2020. Whereafter, the Government of India partially lifted the said lockdown subject to stringent conditions.

- xii. It is germane to mention herein that the construction was further affected by the ban announced by the Commission for Air Quality Management ("CAQM") on 16.11.2021 on the directions issued by the Hon'ble Supreme Court of India whereby it banned the construction and demolition activities in Delhi-NCR region along with calling curbs on polluting sources such as banning the entry of the trucks into Delhi, except those carrying essential items which was thereafter lifted by the Hon'ble Supreme Court on 25.11.2021.
- xiii. Given the premise it is evident that the possession timelines has been diluted and the construction of the project has been marred due to the reasons beyond the control of the Respondents i.e. the force majeure circumstances as defined under Clause 10 of the FBA. Despite all the respondent achieved in competition of the project and applied for the grant of occupation certificate along with the requisite reports. Whereafter, the inprincipal approval was granted on 09.12.2021. Thereafter, the respondent in terms of the FBA issued the offer of possession letter dated 20.12.2021 to the complainant.
- xiv. All the averments in the complaint are denied in toto.

- xv. 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

F. 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.

F.I Territorial jurisdiction

4. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

F.II Subject matter jurisdiction

The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

5. 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 complainant at a later stage.

G. Findings on the objections raised by the respondent

G.1 Objection regarding delay due to force majeure circumstances.

6. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the Unit within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later. So, the due date of subject unit comes out to be

07.12.2016 as is calculated from date of execution of agreement being later after allowing grace period.

7. **Delay possession charges:** The complainant intends to continue with the project and is 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."

8. Clause 5.1 read with clause 1.6 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 5.1- *The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.*

Clause 1.6 "FBA" "Commitment Period" *shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of building plan or execution of Flat*

Buyers Agreement."

9. At the inception it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to innumerable terms and conditions, force majeure circumstances and innumerable terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottees 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 allottees 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 allottees are left with no option but to sign on the dotted lines.
10. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of sanctioning of building plan or execution of buyer's agreement, whichever is later. In the present complaint, the date of building plan is 21.09.2012 and flat buyer's agreement was executed on 07.12.2012. So, the due date is calculated from the date of execution of flat buyer's agreement i.e. 07.12.2012 being later. Further it was provided in the flat

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. Thus, the due date of handing over of possession comes out to be 07.12.2016. The due date of possession is calculated after allowing grace period being unconditional.

11. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate and 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.

12. 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.

13. 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., 31.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
14. The definition of term 'interest' as defined under section 2(za) of the act provides that 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 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—
- (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;"*
15. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, 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 5.1 read with 1.6 of the agreement executed between the parties on 07.12.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., within a period of 42 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later i.e., by 07.12.2016(including grace period of 6 months). The occupation certificate for the tower in which subject unit is situated has been obtained on 09.12.2021 and offer of the said unit has been made on 13.12.2021 and the same has been on record. Also, counsel for the complainant vide proceeding dated 12.04.2024, the counsel for the complainant stated that he is seeking DPC as well as possession of the unit whereas the offer of possession has been given on 13.12.2021. He also stated that he accepts the offer of possession as valid offer of possession except the demands enclosed. Whereas the counsel for the respondent stated that the similar matters were decided by the authority on the recommendations of the Committee constituted in the matter of

similar complaints and hence this matter should be decided on the lines of those committee's recommendations.

Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 07.12.2016 till the date of offer of possession i.e., 13.12.2021 plus two months 13.02.2022 at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

Other reliefs:

16. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST & VAT, advance maintenance charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges are involved in all these cases and others pending against the respondents in this project as well as in other projects developed by them. So, 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. Both the parties were directed to file objections to that report if any. The complainant and other allottees did not file any objections.

H-I Cost Escalation:

17. The buyer's agreement duly accepted and signed between the parties wherein it is mentioned that the cost escalation is to be borne by the allottees. The committee while deliberating on this issue took into consideration the estimated cost of construction at the time of booking/agreement, absorption of 5% inflation by the developer, measurement of cost inflation based on CPWD Index and inflation benefits to be provided for the period up to the date of actual offer of possession or up to the date of committed date of offer of possession. So, taking into consideration all these factors and a certificate of chartered accountant, the committee allowed escalation cost of Rs. 309 per square feet instead of Rs. 723 as raised by the developer. The view taken by the committee in this regard is a reasonable one and the authority agrees to the same and allow the developer to charge cost of escalation of the allotted unit at Rs. 309 per square feet instead of Rs. 723 per sq. ft. from the allottee.

H-II Club Membership Charges

18. The term club membership charges have been defined under clause 1.4 and clause 3.2(a) prescribes the amount of club membership charges to be levied, which are reproduced below:

1.4 "Club Membership Charges" or "CMC" shall mean charges to be paid by the purchaser(s) to the seller or the maintenance service provider for membership of the club to be developed by the seller/confirming party. However, aforesaid charges do not include the usage charges for the club facilities, which shall always be payable extra by the purchaser(s).

3.2 in addition to the aforesaid cost of property, the purchaser(s) has undertaken and agreed to pay the following charges:-

a) club membership charges ("CMC") @ Rs. 2,00,000/- per unit.

19. 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."

20. It was also observed, while giving recommendations that in the cases of nominees of projects 'Spacio' and 'Park Generation' on issues concerning super area, car parking charges, development charges, cost escalation, advance maintenance, GST & VAT etc. may be implemented in case of the

allottee/complainant of 'Terra' project also and the respondent may be directed to comply with the same while offering possession.

21. The authority concurs with the recommendations 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/-.

H-III GST/VAT/Service Tax

22. The allottees have also challenged the authority of the respondent-builder to raise demand by way of goods and services tax. Since 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 if any till March 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
Amount to be refund Only if greater than (E- F) (G)	0.36%	0.53%	2.99%	0.41%	2.99%	2.99%

23. 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 reasons: (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 terms 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."

24. 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 *Prakash 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."

25. In this present complaint, the due date of possession is 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 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. 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 allottee the applicable combined rate of VAT and service tax as detailed in para 28 of this order.

H-IV Electrification & STP charges

26. In the present complaint, it was contended by the complainant that the respondent has been charging various unjust and unreasonable demands under various heads i.e. electrification charges. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of FBA.
27. The authority concurs with the recommendations made by the committee and holds that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottee of Terra @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the

allottee of Terra and be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottee of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

H.V Increased Super Area

28. It is contended that the respondents have increased the super area of the subject unit without giving any formal intimation , by taking any written consent from the allottee. The said fact has not been denied by the respondents in their reply. On perusal of record, the super area of the unit was 1998 sq. ft. as per the flat buyer's agreement and it was increased by 193 sq. ft. vide letter of offer of possession, resulting in total super area of 2191 sq. ft. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the super area of the unit would be revised and increased by the respondent, and they shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

H.VI Maintenance Charges

29. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

H.VII Direct the respondent to award compensation of Rs. 50,000/-

30. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

I. Directions of the authority

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

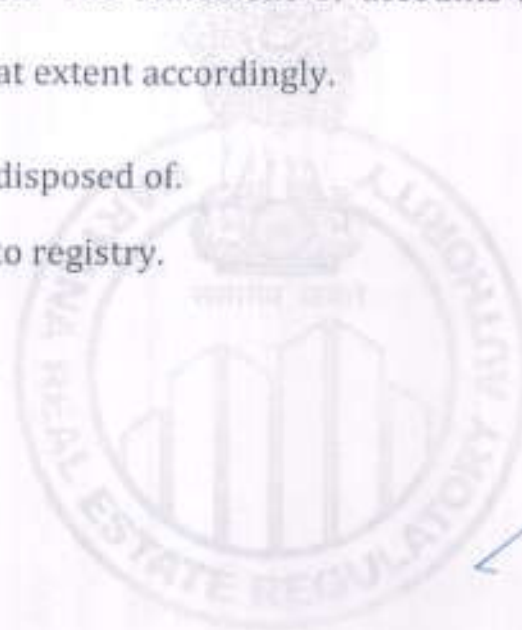
- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay

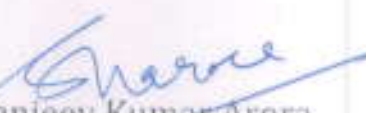
- on the amount paid by him from the due date of possession i.e., 07.12.2016 till the date of offer of possession 13.12.2021 plus two months 13.02.2022.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent is directed to handover the possession of the unit, subject to clearance of outstanding dues.
 - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vi. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - vii. **HVAT charges:** The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 27 of this order.

- viii. **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/-.
- ix. **Cost escalation:** The authority is of the view that escalation cost can be charged only up to Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- x. **Increase in area:** Accordingly, the super area of the unit be revised and reduced by the respondents and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.
- xi. **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be

deleted, and only STP charges be demanded from the allottees of Terra @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Terra be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

32. Complaint stands disposed of.
33. File be consigned to registry.




Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.05.2024