



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	242 of 2022
Date of filing.:	07.03.2022
First date of hearing.:	17.05.2022
Date of decision.:	22.11.2023

Jitender Kaushik S/o Laxmi Narayan Kaushik
R/o Kaushik S.T.D, Near Railway Station Chungi,
Palwal, Haryana-121102

....COMPLAINANT

VERSUS

M/s BPTP Limited through its Managing Director
M-11, Middle Circle, Connaught Place,
New Delhi- 110001

.....RESPONDENT

CORAM: Nadim Akhtar Member

Dr. Geeta Rathee Singh Member

Present: - Mr. Nitin Kant Setia, Counsel for the complainant
through VC
Mr. Hemant Saini, Counsel for the respondent.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint 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

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, 82 to 85, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	H6-20-SF, H Block admeasuring 1022 sq. ft.
6.	Date of endorsement in favour of complainant	09.10.2013



7.	Date of builder buyer agreement(with original allottee)	24.08.2010
8.	Due date of possession	24.08.2012
9.	Possession clause in BBA (Clause 4.1)	<p>4. <u>Possession:</u></p> <p><i>4.1. 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 and subject to the Purchaser(s) 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 Stamp Duty 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 24 months from the date of sanction of building plan,. 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</i></p>



		<i>the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. 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).</i>
10.	Basic sale consideration	₹ 20,55,999/-
11.	Amount paid by complainant	₹ 22,60,940.43/-

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the predecessors of the complainant, i.e., Mr Sumit Dudeja and Mrs Dolly Dudeja booked a unit in the project of the respondent namely "Park Elite Floors" situated at Faridabad, Haryana on 29.05.2009 upon payment of ₹ 2,50,000/- as booking amount. They were allotted unit no. H6-20-SF, measuring 1022 sq. ft. Second Floor, Park Elite Floors, Parklands, Faridabad. A floor buyer agreement was executed between the original allottees and the



respondent on 24.08.2010. A copy of the floor buyer agreement is annexed as Annexure C-2 in the complaint file. The basic sale price of the unit was fixed at ₹ 20,55,999/- against which the complainant has paid a total amount of ₹ 22,60,940.43/- till date. As per clause 4.1 of the agreement, possession of the unit was to be delivered within a period of twenty four (24) months from the date of sanction of building plan. Respondent and the original allottees executed an addendum dated 24.08.2010 itself to the floor buyer agreement. Vide said addendum the clause 4 and 5 of the floor buyer agreement were modified to the extent that timeline for delivery of possession of the unit was changed to a period of 24 months from the date of execution of the floor buyer's agreement or completion of payment of 35 % of the basic sale price alongwith 20% of EDC and IDC, whichever is later. Further, as per clause 4.1, the promoter shall also 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. That 24 months from the date of execution of the agreement, the deemed date of possession works out to 24.08.2012.

4. That despite regular payments made by the predecessors of the complainant, respondent failed to deliver the possession of the unit. On not being in a position to wait any longer, the predecessors transferred their rights qua the said unit in favour of the complainant. The respondent



endorsed the nomination of the unit in favour of the complainant on 09.10.2013. A copy of nomination letter dated 09.10.2013 is annexed as Annexure C-3 in the complaint file. That the nomination letter suggested that the parties would be bound and will abide by all the terms and conditions of the booking/allotment. The effect of the said endorsement was that the complainant had stepped into the shoes of the original allottee for all intents and purposes and was vested with all the rights that the original allottees had including the right to claim delay interest from the deemed date of possession calculated from the date of booking by the previous owner.

5. That as per clause 4.1 of the floor buyer agreement, possession of the unit was to be delivered within a period of 24 months from sanction of building plans. However, vide addendum dated 24.08.2010, the said condition was substituted stating that possession would be handed over within a period of 24 months from the date of execution of floor buyer agreement. That the starting date ought to have been the date of booking for the purpose of start of delivery.
6. The complainant had paid the entire money linked with achieving of construction benchmarks. It is submitted that even after a lapse of more than ten years from the date of booking, respondent is not in a position to offer possession of the booked unit to the complainant. It is further stated



that till date, the respondent has neither provided possession of the unit nor refunded the deposited amount along with interest.

7. That in terms of the agreement in case of delay in construction and development, the respondent had made the provision of only Rs 5 per sq. ft. 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 as compared to the exorbitant 18% rate of interest on delay payment.
8. The terms of the agreement are heavily biased in favour of the respondent as the respondent has not given any exit option to the complainant in floor buyer agreement.
9. Further, the respondent has overcharged the complainant purportedly on account of increase in area from 1022 sq. ft. to 1170 sq. ft. That the said demand was illegal and there was no justification given for increase of more than 10% of the area.
10. That thereafter when the date of delivery of possession had long passed respondent had raised demand towards EEDC in May 2012. That after the date of possession had elapsed the complainant was not bound to pay any fresh demands on account of EEDC or any other statutory demands.



11. Aggrieved by the non-delivery of unit by the respondent, the complainant had contacted the respondent on several occasions for handing over the peaceful possession of the unit without any further delay. Till date, however, the respondent has not offered the possession of the unit.
12. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

13. That the complainant seeks following relief and directions to the respondent:-
- i. Direct the respondent to handover possession of the unit H6-20- SF admeasuring 1022 sq ft, Second Floor, Park Elite Floors, Parklands, Faridabad.
 - ii. Declare that the terms of the BBA are one-sided, prejudicial to the interest of the purchasers, arbitrary and biased and against the provisions of the Real Estate (Regulation and Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.
 - iii. Direct the respondent to pay delay penalty in terms of Section 18 of the Act from the date of completion of two



years and six months from the date of first receipt of money from the allottees .

- iv. Declare that the amount collected towards increase in super area as illegal as there is no increase in the area from the one approved by the state authorities and there is no approved revision in building plans thereafter from the competent authorities.
- v. Direct the respondent to return the amount collected towards increase in super area for the reason that there was no increase in the area and no revised sanctioned plans showing increased area were ever supplied to the complainant.
- vi. Direct the respondent to pay compensation to the tune of ₹. 5,00,000/- on account of mental agony and harassment.
- vii. Direct the respondent to compensate the complainant for loss of life of building by 10 years as the construction of the unit was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent.
- viii. 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.



14. During course of hearing, learned counsel for the complainant argued that as per clause 4.1 of the said agreement read with addendum dated 24.08.2010, possession of the unit was supposed to be delivered within a period of 24 months from date of execution of floor buyer agreement i.e by 24.08.2012. Complainant had purchased the unit in question in the year 2013. Despite a lapse of more than 11 years respondent has failed to provide possession of the unit to the complainant till date. Complainant has already made a payment of Rs.22,60,940.43/- to the respondent however, the possession is yet to be offered. Complainant is interested in seeking possession of the unit after grant of occupation certificate.

15. Learned counsel for the complainant further submitted that complainant is not pressing upon the relief clause no. (iv) and (v) with respect to increase in area and refund of amount paid in lieu of said increase.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

16. Learned counsel for the respondent filed a detailed reply on 08.07.2022 pleading therein:

17. It is submitted that the unit in question was booked by the original allottees in 2009. On 24.12.2009, respondent duly allotted a unit bearing no. H6-20-SF on the second floor having tentative area of 1022 sq ft. A floor buyer agreement was executed between both the parties on 24.08.2010. Vide agreement to sell dated 10.09.2013, original allottees



transferred the unit in question to the complainant. Whereafter, the respondent vide nomination letter dated 09.10.2013 endorsed the unit in question in the name of subsequent allottee, i.e., the present complainant. The respondent in line with the terms of the floor buyer agreement read with the addendum thereof subject to force majeure proposed to hand over possession of the unit within a period of 24 months from the date of execution of the floor buyer agreement or completion of 35% of the basic sale price along with 20% of EDC and IDC, whichever is later, along with a further grace period of 180 days.

18. That the said agreement was executed, i.e., prior to the implementation of RERA Act on 24.08.2010 in line with the addendum to the floor buyer agreement and the same shall be binding on the parties and cannot be reopened.

19. That the complainant at the time of purchasing the unit had conducted the due diligence to his satisfaction and was acquainted with the terms and conditions prior to the signing of the application for allotment.

20. Regarding relief pertaining to refund of amount paid by complainant on ground of increased area, it is submitted that super area of the floor shall be subject to the change/amendment, i.e., increase or decrease in terms of clause 2.4 of the floor buyer agreement. Initially allotted area was tentative and the same was subject to change/alteration/modification/revision.



21. That with regard to the delay in offering possession of the unit in question, that 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. It is germane to mention that the construction was further affected by the ban announced by the Commission for Air Quality Management (CAQM) on 16.11.2021 on the direction issued by the Hon'ble Supreme Court of India whereby it banned the construction and demolition activities in Delhi-NCR region.
22. During the course of hearing, learned counsel for the respondents further argued that original allottees had been duly apprised with regard to the tentative area of the unit vide affidavit dated 12.10.2010. In response to which the original allottees had given an undertaking in this



regard stating that they will accept the such alternative/changed floor, if any. The original allottees further agreed not to hold the respondent-builder responsible for any delay in offer of possession, if such a delay is due to change in tentative layout. A copy of the undertaking is placed at page 87 of the reply. The complainant in this case had stepped into the shoes of the original allottees on 09.10.2013 with complete knowledge of the delay in construction of the project and the terms of contract between both the parties. At the time of purchasing the unit in question and subsequent endorsement, complainant was fully aware that respondents are not in a position to handover possession of the unit. Mr. Hemant Saini, Ld. Counsel for respondent submitted that at present, the unit of the complainant is completed however, 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 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. He also submitted that the construction of the project had been delayed because of the pandemic COVID-19 among other factors. The onset of COVID-19 amounts to force majeure conditions for the respondent builder. He prayed that at the time of calculating the admissible delay interest, the period for COVID-19 be excluded for the same on force majeure grounds.



E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection raised by the respondent with regard to deemed date of possession .

As per clause 4.1 of the floor buyer agreement read along with addendum dated 24.08.2010, 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 payment of 35% of basic sale price alongwith 20% of EDC/IDC, 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 24.08.2012. 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 construction works within 24 months. Thus, the period of 24 months expired on 24.08.2012. 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.II Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 4.1 read along with addendum and observations recorded in



para EI works out to 24.08.2012, 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 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 as an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

Moreover, the respondent has 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.



23. Admittedly the complainant in the present case is a subsequent allottee who purchased a unit in the project in question through open market from original allottees Mr. Sumit Dudeja and Mrs Dolly Dudeja in the year 2013. The unit in question ,i.e, H6-20-SF, admeasuring 1022 sq. ft was booked by the original allottees on 29.05.2009 and subsequent thereupon a floor buyer agreement was signed between the original allottee and the respondent promoter on 24.08.2010. Thereafter, the unit was endorsed in the name of complainant by the respondent vide endorsement letter dated 09.10.2013. Meaning hereby that the complainant stepped into the shoes of the original allottees. On perusal of the documents placed on file it is noted that no fresh floor buyer agreement was signed between the complainant and the respondent promoter, hence the complainant who is a subsequent allottee shall be bound by the terms and conditions stipulated in floor buyer agreement dated 24.08.2010. As per clause 4.1 of the buyers agreement read along with addendum dated 24.08.2010, 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 along with a grace period of 180 days for filing and pursuing the grant of occupation certificate from the competent Authority. Despite lapse of more than 11 years, possession of the unit is yet to be delivered. Complainant in this case is willing to wait for possession of the unit after grant of occupation certificate.



24. The main contention of both the parties is with regards to the period for which interest for the delay caused in delivery of possession should be admissible to the complainant. Learned counsel for the respondent has argued that since complainant is a subsequent allottee who stepped into the shoes of original allottee after expiry of the due date of possession, he is only entitled to delay interest beginning from the date of endorsement and not from the due date of possession.
25. 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 original allottee due to their own compulsions could not continue to wait for the delivery of possession beyond the due date and were compelled to sell the unit in the year 2013. It was on 09.10.2013 that the present complainant stepped into the shoes of the original allottee. At that time, the complainant had made the purchase after verifying the status of the unit to their satisfaction and was thoroughly acquainted with the terms and conditions. Complainant was very well aware of the fact that the possession of the unit has been delayed and that the construction of the unit is not in accordance with the agreed timeline. There were clear apprehensions that the possession of the unit will be further delayed for an uncertain amount of time. The complainant was already mentally prepared to wait for some time in the

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future to get possession of the purchased unit unlike the original allottees.

26. The principal argument of the respondent is with regards to the rights of the subsequent allottee, i.e., the complainant who purchased a unit after being aware of the fact that the due date of possession has already expired and that the possession of the unit is delayed. It is clear that the complainant allottee was aware of the fact delivery of possession of the unit has been delayed. Complainant entered into the picture only after the endorsement was acknowledged by the respondent on 09.10.2013. Though, the due date of possession in present case was 24.08.2012 but the present complainant did not suffer because of the delayed possession until after the endorsement, i.e, from October 2013. The subsequent allottee did not suffer any agony and harassment because of the delay till 09.10.2013 to become entitled to claim compensation from the due date of possession. Rather that rights are only bestowed upon the original allottee who themselves exited the project and forego said rights. It is true that the subsequent allottee had stepped into the shoes of the original allottee but the rights of subsequent allottee are fact dependent.
27. The main issue in present discussion is with regards to the question whether the subsequent purchaser is not entitled to similar relief as the original allottee, once he or she steps in place of the original allottee and can the subsequent allottee be denied the relief which the original allottee



is entitled to lay claim on in case they had continued with the project. When the original allottee entered into an agreement with the respondent builder for purchase of a unit in the project, the delivery was promised to be made within a time frame. Execution of a real estate project is an arduous task. Timely delivery of possession of a real estate project is dependent on several factors. In the event of hindrance on account of even one of the factors, the whole of the project comes to a stand still. In turn the possession of the unit is delayed. An allottee who has invested in such an under construction project, understands these risk factors . However, in the event the prolongation of the project creates an economic repercussion upon such original allottees, and the allottee is not in a position to wait indefinitely, allottees are constrained to find purchasers to step into their shoes. That such purchasers take over the rights and obligations of the original allottee qua the unit in question. However, the relative equities with regard to the time frame in each case are different. That the subsequent purchaser is not bound by the fears of delay and uncertainty since the picture with regard to the development and subsequent handing over of possession is clearer than at the time of booking of the unit or due date of possession. That a subsequent purchaser makes a purchase only after verifying the latest development of the project and the prospects of further development and willingly chooses to be a part of the project which has already been delayed being



very well aware of the reasons thereof. This scenario is entirely different from the mindset of the original allottee who had booked the unit under the apprehension of timely delivery of possession and had to later suffer because of the delay caused in delivery of possession. The subsequent allottee did not have to suffer the period of delay unlike the original allottees who was stuck in the project because of having invested their money awaiting timely possession.

28. Nonetheless, in cases where the complainant/ subsequent allottee had purchased the unit after expiry of the due date of possession, the Authority is of the view that the subsequent allottee cannot be expected to wait for an uncertain period of time to take possession. Even such allottee waiting for the promised unit and surely they would be entitled to all reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute that knowledge that such delay would continue indefinitely based on prior assumption would not be justified. Furthermore, in cases where the floor buyer agreement was a pre-RERA contract and the subsequent allottee stepped into the shoe of the original allottee after the deemed date of possession but before RERA Act 2016 coming into force, the statutory right to seek delayed possession interest had not accrued in favour of the original allottee. However, after the date of endorsement the subsequent allottee stepped into the shoes of original allottee w.r.t the unit and the



possession was not handed over, the subsequent allottee became entitled to the statutory relief of delayed interest and same shall be applicable from the date he was acknowledged as allottee by the respondent promoter. Therefore, the Authority relies upon the case cited by respondent titled as “**M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh**” in which the Hon’ble Supreme Court observed that the subsequent allottee who stepped into the shoes of original allottee is already aware of the delay caused in delivery of possession. However, mere knowledge that there is delay in delivery of possession does not justify delay beyond a reasonable period of time. Therefore, such subsequent allottee is entitled to relief of refund of principal amount, with interest from the date the builder acquired knowledge of the transfer, or acknowledged it. Relevant part of the order of the Hon’ble Supreme Court is reproduced below:

“31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable



time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal, the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms”



29. In present complaint, the respondent endorsed the transfer of booking rights qua the unit in question in respect of the complainant on 09.10.2013, i.e., after the due date of possession on 24.08.2012. Thereafter, there was a delay of more than 10 years in delivery of possession of the booked unit. At the time of purchase the complainant was aware that the construction of the project is being delayed beyond the due date of possession. However, even the purchaser agrees to purchase a unit with an apprehension that the possession will not be delayed beyond a reasonable expectation. However, in present complaint, the possession has been delayed by more than 10 years from the date of endorsement i.e 09.10.2013 which is an unreasonable delay. Therefore, in light of M/s Laureate Buildwell Pvt Ltd. Vs Charanjeet Singh judgement the complainant will be entitled to delay interest for the delay caused in delivery of possession from the date of endorsement, i.e., 09.10.2013 till an offer of possession is issued to the complainant after 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. 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”..”



30. 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. 22.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
31. 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 the date of endorsement, i.e, 09.10.2013 till the date an offer of possession is issued to the complainant after receipt of occupation certificate.
32. Authority has got calculated the interest on total paid amount from the date of endorsement, i.e., 09.10.2013 till the date of order ,i.e., 22.11.2023 which works out to Rs 23,49,979/- and further monthly interest of Rs 19,977/- 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 22.11.2023 (in ₹)
1.	21,11,549.70/-	09.10.2013	22,99,145/-
2.	23,099/-	03.12.2016	17,321/-
3.	1,26,291.73/-	05.06.2021	33,513/-



Total:	22,60,940.43/-		23,49,979/-
Monthly Interest:	22,60,940.43/-		19,977/-

33. In the complaint file, the complainant has claimed to have paid an amount of ₹ 22,60,940.43/- to the respondent which has also been admitted to by the respondent vide statement of account dated 05.06.2021. However, as per the receipts attached the total paid amount works out to ₹ 21,34,648.70/-. For the remaining amount of ₹ 1,26,291.73/- receipts have not been attached. Therefore, for said amount date of 05.06.2021, vide which said amount has been accepted is being taken for the purpose of calculation of interest. The amount of interest payable to complainant has been calculated on total paid amount of ₹ 22,60,940.43/- . Further, out of total amount of ₹ 22,60,940.43/-, complainant has paid an amount of ₹ 22,11,116.73/- and has received a credit of ₹ 49,823.70/- as timely payment discount. 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 complainant cannot be denied his 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.

34. At the time of filing of complaint, complainant has also prayed for relief with respect to increase in area and refund of amount paid in lieu of said increase vide relief clause no. iv and v. However, during course of hearing proceeding learned counsel made oral statement that complainant is not pressing/arguing upon relief no. iv and v with respect to increase in area and refund of amount paid in lieu of increased area, therefore, the said reliefs cannot be granted.

35. The complainant is seeking compensation to the tune of ₹ 5,00,000/- on account of mental agony and harassment and compensation for loss of life of building by 10 years as the construction of the unit was completed in the year 2011-12 and since then the unit is lying abandoned without any care or maintenance by the respondent. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

36. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act to ensure compliance of obligation cast upon the promoter as per the function entrusted upon the Authority under Section 34(f) of the Act of 2016:

(i) Respondent shall issue an offer of possession to the complainant within a period of one month from the date of receipt of occupation certificate from the concerned authority, i.e., DTCP. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the complainant on account of delay caused in delivery of possession.



(ii) Respondent is directed to pay upfront delay interest of ₹23,49,979/- (till date of order ,i.e., 22.11.2023) 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 @ ₹ 19,977/- (admissible from 22.11.2023 till the date of offer of possession after receipt of occupation certificate).

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

(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 more from the complainant which is not part of the agreement to sell.



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


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


.....
NADIM AKHTAR
[MEMBER]