



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	244 of 2022
Date of filing.:	08.03.2022
First date of hearing.:	17.05.2022
Date of decision.:	22.11.2023

1. Sajag Jain, S/o Sh. Suresh Chand Jain
2. Rachna Jain W/o Sajag Jain
Both R/o H.No 1195, Type-4, NH-4,
Near KV No. 3, NIT, Faridabad-121001,

....COMPLAINANTS

VERSUS

M/s BPTP Limited through its Managing Director
M-11, Middle Circle, Connaught
Circus, 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 complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Sector 75, 82 to 85, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	H4-19-FF, H- Block First Floor, admeasuring 1022 sq. ft. Second Floor



6.	Date of builder buyer agreement	29.06.2010
7.	Due date of possession	29.06.2012
8.	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 hand 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 the expiry of 24 months, for</i></p>



		<i>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>
9.	Basic sale consideration	₹ 20,55,999/-
10.	Amount paid by complainant	₹ 22,94,671/-
11.	Offer of possession	Not given till date.

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainants had booked a unit in the project of the respondent namely, "Park Elite Floors" situated at Faridabad, Haryana on 26.05.2009 upon payment of ₹ 2,50,000/- as booking amount. Vide allotment letter dated 24.12.2009, complainants were allotted unit no. H4-19-FF, measuring 1022 sq. ft. First Floor, Park Elite Floors, Parklands, Faridabad. A floor buyer agreement was executed



between the complainants and the respondent on 29.06.2010. A copy of the floor buyer agreement is annexed as Annexure C-6 in the complaint file. The basic sale price of the unit was fixed at ₹ 20,55,999/- against which the complainant had paid a total amount of ₹ 22,94,671/- 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. 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 till the signing of the floor buyer agreement, respondent had already taken an huge amount of Rs 7,11,420/- from the complainant against allotted floor. Complainants were left with no choice but to agree with the one-sided arbitrary floor buyer agreement put up by the respondent.

4. Respondent and the complainants executed an addendum dated 29.06.2010 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. The period of 24



months from the date of execution of the floor buyer agreement expired on 29.06.2012.

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 29.06.2010, 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, i.e., 20.05.2009 for the purpose of the start of period for delivery of possession.
6. The complainants had paid the entire money linked with achieving construction benchmarks. 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 complainants. It is further stated that till date, respondent has neither provided possession of the unit nor refunded the deposited amount along with interest to the complainants.
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 sqft 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 complainants, it had provided for the delay penalty @ 18% interest compounded quarterly. The complainants are 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 rate of interest @18% 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 complainants in floor buyer agreement.
9. Further, the respondent has overcharged the complainants purportedly on account of increase in area from 1022 sq. ft. to 1170 sq. ft by raising a demand of Rs 1,18,343/-. That the said demand was illegal and there was no justification given for said 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 on 05.05.2012. That the complainants had paid an amount of Rs 97,830/- towards EEDC. It is submitted that after the date of possession had elapsed complainant was not bound to pay any fresh demands on account of EEDC or any other statutory demands. Therefore, respondent is liable to refund the said amount with adequate rate of interest.
11. Aggrieved by the non-delivery of the unit by the respondent, complainants had contacted the respondent on several occasions and requested for handing over the peaceful possession of the unit without any further delay. However, till date respondent has not offered the possession of the unit to the complainant.



12. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEFS SOUGHT:-

13. That the complainant seeks following reliefs and directions to the respondent:-

- i. Direct the respondent to handover possession of the unit H14-19-FF admeasuring 1022 sq ft in, 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 complainants argued that as per clause 4.1 of the said agreement dated 29.06.2010 read with addendum dated 29.06.2010, 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 29.06.2012. However, despite a lapse of more



than 11 years respondent has failed to provide possession of the unit to the complainants till date. Complainants have already made a payment of Rs 22,94,671/- to the respondent towards total sale consideration of the unit. Respondent is still not in a position to deliver the possession to the complainants since the unit is yet to receive occupation certificate. He further submitted that the complainants wish to stay with the project and are interest in seeking possession of the unit after grant of occupation certificate.

15. It is pertinent to mention that during the course of hearing, learned counsel for the complainants submitted that he 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 on 08.07.2022 pleading therein:

17. It is submitted that the unit in question was booked by the complainants in 2009. On 24.12.2009, respondent duly allotted a unit bearing no. H4-19-FF on the first floor having tentative area of 1022 sq ft. A floor buyer agreement was executed between both the parties on 29.06.2010. 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 on 29.06.2010, i.e., prior to the implementation of RERA Act in line with the addendum to the floor buyer agreement and the same shall be binding on the parties and cannot be reopened.
19. Regarding relief pertaining to refund of amount paid by complainants 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. It is pertinent to mention that respondent in this regard has also submitted an application dated 19.01.2023 submitting that in the annexure A of the floor buyer agreement it had been categorically mentioned that the area of the unit was tentative and it was further agreed between the parties that there may be a variation in the super area to the tune of 15%. That the super area of the unit at the time of booking was 1022 sq. ft and presently the super area of the unit is 1170 sq. ft. Admittedly, there is an increase in the super area of the unit, however, the same is well within the agreed terms of the floor buyer's agreement.



20. It is submitted 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.

21. During the course of hearing, learned counsel for the respondent further argued that as per the terms of the floor buyer agreement dated 29.06.2010 read along with addendum dated 29.06.2010, the deemed date of possession for delivery of unit works out to 29.06.2012. He submitted



that despite facing several hindrances, respondent has duly completed construction of the project including the unit of the complainant. That after completion of construction work respondent had applied for grant of occupation certificate and received the same on 18.08.2023 and the respondent is in the process of offering possession to allottees. Complainants may take possession of the unit as it is ready in all respects.

22. At this point, it was pointed out by the learned counsel for the complainants that the respondent has not placed on record a copy of the occupation certificate to prove that occupation certificate has been received for the unit in question. Further, respondent has not yet issued an offer of possession to the complainants for taking over possession of the booked unit.

In response, Mr. Hemant Saini, learned counsel for the respondent submitted that with regard to receipt of occupation certificate his statement may be recorded that the same has been received qua the unit of the complainants on 18.08.2023. Further, the complainants may consider his statement an offer to take possession of their booked unit and accordingly, visit the office of the respondent company for completing all the formalities.

23. Learned counsel for the respondent further submitted that the construction of the project had been delayed because of the pandemic

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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 dated 29.06.2010 read along with addendum dated 29.06.2010, 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 29.06.2012. 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 29.06.2012. 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 29.06.2012, 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 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.

24. Admittedly, complainants were allotted the unit in question i.e H4-19-FF, admeasuring 1022 sq. ft on 24.12.2009 by the respondent and subsequent thereupon a floor buyer agreement was signed between the complainants and the respondent promoter on 29.06.2010. As per clause 4.1 of the buyers agreement read along with addendum dated 04.09.2010, 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. As per observations recorded in para E1 of the order, possession of the unit should have been delivered by 29.06.2012. However, an offer of possession has not been issued to the complainants till date. Whereas, learned counsel for the respondent has submitted before the Authority that the occupation certificate qua the unit in question has been received on 18.08.2023 and respondent is in the process of issuing offer of possession to the complainant. Admittedly there is a delay of more than 11 years in



offering of possession on the part of the respondent from the deemed 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 for delivery of possession. The main point of contention between both the parties is with regards to the period for which interest the delay caused in delivery of possession should be admissible to the complainant. The complainants in captioned complaint intend 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 Page 191 of 205 Complaint No. 4031/2019 and others month of delay, till the handing over of the possession, at such rate as may be prescribed.”

Possession in this case should have been delivered to the complainants by 29.06.2012. However, the same was delayed beyond the stipulated time period. Further, as per Section 18 of the RERA Act, in case possession of the unit has been delayed and an allottee intends to continue with the project, then the allottee shall be entitled to payment of



interest till handing over of possession. In captioned complaint, fact of the matter is that occupation certificate had been received by the respondent on 18.08.2023. Grant of occupation certificate aptly justifies that the unit qua which the occupation certificate has been granted is ready for possession. However, receiving an occupation certificate does not entirely ascertain that the complainants have become aware of the fact that the unit is in fact ready. It is the duty of the respondent to communicate to the complainants that the unit booked by the complainants has received occupation certificate and is ready for possession, so that the complainant may come forward and take it. In such cases, the receipt of occupation certificate is conveyed to the complainants by way of issuing an offer of possession along with a copy of occupation certificate which is a formal communication on behalf of the respondent to the complainants apprising with regard to completion of unit and status of handover of possession. Up until an offer of possession has been issued to the complainants, the complainants cannot be expected to have the knowledge that his/her unit is ready and available for possession. This process has to be initiated by the respondent and that is with issuing an offer of possession. Merely receiving an occupation certificate and not communicating the same to the complainant does not tantamount to a proper communication of completion of the unit and allottee cannot be held liable for any delay caused in taking over of



possession, in case the same has not been officially communicated by the respondent. Respondent in this case had received occupation certificate on 18.08.2023. Till now an offer of possession has not been issued by the respondent to the complainants qua the unit in question. Though it is true that as per occupation certificate the unit was ready for taking over of possession by 18.08.2023, however, the complainants cannot be expected to take possession without issuance of a proper offer of possession. Complainants cannot be held accountable for not taking any action after receipt of occupation certificate because of the fact they were not made aware of the same by the respondent.

26. As per the observations recorded in preceding paragraphs, respondent has completed the construction of the unit and received occupation certificate on 18.08.2023. An offer of possession is yet to be issued to the complainants qua the same. Learned counsel for the respondent has stated before the Authority that since the occupation certificate has already been granted, complainants may visit the office of the respondent company and begin formalities for taking over of possession. However, a copy of the occupation certificate has not been placed on record by the respondent and neither a copy of the occupation certificate has been supplied to the complainants. It is pertinent to note that mere verbal submission that occupation certificate has been received and unit is ready for possession

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does not tantamount to a valid offer of possession. Respondent is duty bound to issue a valid offer of possession to the complainant along with a copy of the occupation certificate and detailed statement of accounts of payable and receivable amounts towards the unit in question including the delay interest admissible to the complainants for the delay caused in delivery of possession. Since, the respondent has yet to issue a valid offer of possession to the complainants, therefore, the liability cast upon the respondent under Section 18 of the RERA Act will continue till the date of an offer of possession has been issued to the complainants. 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”..”

27. 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%.

28. Hence, Authority directs the respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.70%

+ 2.00%) from the deemed date of possession, i.e., 29.06.2012 till the date an offer of possession has been issued to the complainants .

29. Authority has got calculated the interest on total paid amount from the deemed date of possession, i.e., 29.06.2012 till the date of order which works out to Rs 25,20,166/- and said further monthly interest of Rs 20,178/- till the date of offer of possession 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.	7,71,299/-	29.06.2012	9,45,908/-
2.	3,38,972.79/-	30.06.2012	4,15,611/-
3.	1,18,343.90/-	25.08.2012	1,43,148/-
4.	2,68,258.79/-	06.10.2012	3,21,166/-
5.	2,71,755.62/-	03.11.2012	3,23,112/-
6.	2,53,819.79/-	22.12.2012	2,98,124/-
7.	2,61,251.58/-	17.04.2021	73,097/-
Total:	22,83,701.47/-		25,20,166/-
Monthly Interest	22,83,701.47/-		20,178/-

30. In the complaint file, the complainants have claimed to have paid an amount of ₹ 22,94,671/- to the respondent. However, as per the receipts attached the total paid amount works out to ₹ 20,22,449.89/-. However,

as per the statement of account issued by the respondent on 17.04.2021, the total amount paid by the complainants has been admitted to be Rs 22,83,701.47/-. For the remaining amount of Rs 2,61,251.58/- the date of statement of account, i.e., 17.04.2021 is being taken as the date for the calculation of interest. Therefore, amount of interest payable to complainants has been calculated on total paid amount of Rs 22,83,701.47/-. Further, out of total amount of ₹ 22,83,701.47/-, complainants have also received a certain amount of credit as timely payment discount which has been added towards the total sale consideration. 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 complainants. Although it is true that this discount is an act of good will on the part of the respondent but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainants cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.



31. Arguments in respect of force majeure conditions put forth by learned counsel for the respondent cannot be accepted as no such conditions have been shown to be applicable. Nothing extraordinary has taken place between the date of executing the BBA and the due date of offer of possession.
32. At the time of filing of complaint, complainants have 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 proceedings, learned counsel for the complainants made an oral statement that complainants are 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.
33. The complainants are 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 of the Authority for seeking the relief of litigation expenses.

F. DIRECTIONS OF THE AUTHORITY

34. 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 upon the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent shall issue an offer of possession to the complainants within a period of one month from the date of this order. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest as per RERA Rules, 2017 admissible to the complainants on account of delay caused in delivery of possession.



(ii) Respondent is directed to pay upfront delay interest of ₹25,20,166/- (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 @ ₹ 20,178/- (admissible from 22.11.2023 till the date of offer of possession).

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

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.75% by the respondent/ promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

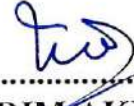
(iv) The respondent shall not charge anything more from the complainant which is not a part of the agreement to sell/BBA.



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



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DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]