HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	**1218 of 2021**
Date of filing.:	**08.11.2021**
First date of hearing.:	**14.12.2021**
Date of decision.:	**16.11.2023**

1. Smt. Shivani Bhat W/o Sanjeev Bhat ....COMPLAINANTS

2. Sanjeev Bhat S/o Chaman Lal Bhat
Both R/o 501, Ferrera,
Mahagun Mansion-1,⅕, Vaibhav Khand, Indirapuram,
Shipra Sun City,
Ghaziabad-201014 (U.P)

VERSUS

1. BPTP Limited ....RESPONDENTS
Office Address: OT-14, 3rd Floor, Next Door,
Parklands, Sector-76, Faridabad-121004

2. M/s Country wide Promoters Pvt Ltd.
Regd Office :28 ECE House, 1st Floor, KG Marg,
Connaught Circus, New Delhi- 110001

3. M/s BPMS Ltd Through its Managing Director
Office Address: OT-14, 3rd Floor, Next Door,
Parklands, Sector-76, Faridabad-121004

Complaint no.:	**1221 of 2021**
Date of filing.:	**08.11.2021**
First date of hearing.:	**14.12.2021**
Date of decision.:	**16.11.2023**

1.Ajay Kumar Bahri S/o Late Sh M L Bahri ....COMPLAINANTS

2. Bharti Bahri W/o Ajay Kumar Bahri
Both R/o F. No. 505, Vaish CGHS, GHS-5,
Sector-45, NIT,
Faridabad-121001

VERSUS

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Parklands, Sector-76, Faridabad-121004

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

Present: - Mr. Sanjeev Bhat and Mrs Shivani Bhat,
Complainants through VC
Mr. Hemant Saini, Counsel for the respondents.

ORDER (NADIM AKHTAR- MEMBER)

1. Both captioned complaints are taken up together for hearing as they involve the same issues pertaining to the same project and against the same respondents only. This order is passed by taking the complaint No. 1218 of 2021 titled "Shivani Bhat and Sanjeev Bhat vs M/s BPTP Limited and others" as lead case and facts are being taken from Complaint no.1218 of 2021.

2. Complaint no. 1218 of 2021 has been filed by the 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

3. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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-81, Parklands, Sector-81, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	VL1-19-GF, measuring 1402 sq. ft on a plot size of 275 sq. yards.
6.	Date of floor buyer agreement	27.04.2012
7.	Due date of possession	27.04.2015
8.	Possession clause in FBA (Clause 5.1)	Clause 5.1- Subject to Clause 14 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 all instalments and that of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions,formalities,documentation 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 possession of the Floor to the Purchaser(s) for fit outs within a period of 36 months from the date of sanction of the building plan or execution of the Floor Buyer Agreement, whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 36 months as stated above, for applying and obtaining the occupation certificate from the competent authority.
9.	Basic sale consideration	₹ 48,36,754/-
10.	Amount paid by complainant	₹ 64,65,215.62/- (Details on Page 15 and 16 of the complaint)
11.	Offer of possession.	Not given till date

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

4. Facts of the present complaint are that a unit had been booked in the project of the respondent namely, "Park-81, Parklands" situated at Sector-81, Faridabad, Haryana by the complainants by paying a booking amount

of ₹ 3,00,000/- on 25.09.2009. Vide allotment letter dated 16.03.2010, complainants were allotted a unit no. VL1-19-GF, measuring 1402 sq. ft. in the project "Park-81", Parklands, situated in Faridabad. A copy of the allotment letter issued by the respondent is annexed as Annexure P-3 in the complaint file. A Floor buyer agreement (FBA) qua the said unit was executed between both the parties on 27.04.2012. A copy of the floor buyer agreement issued by the respondent is annexed as Annexure P-5 in the complaint file. As per clause 5.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date of sanction of the building plan or execution of the floor buyer's agreement, whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate from the competent Authority. As per FBA, the deemed date of possession works out to 27.04.2015. The basic sale price of the unit was fixed at ₹ 48,36,754/- against which the complainant has paid a total amount of ₹ 64,65,215.62/- till date. That after a lapse of more than 5 years from the deemed date of possession, respondent issued an offer possession for the unit to the complainants on 22.07.2020. A copy of offer of possession letter dated 22.07.2020 is annexed as annexure P-13. However, said offer of possession was premature as the respondent had yet to receive occupation certificate

and hence said offer of possession was not a valid offer of possession. Further, the letter dated 22.07.2020 offering possession compels the complainants to execute an indemnity-cum-undertaking in the form enclosed with the letter as Annexure-C. Respondents cannot force complainants to give up their legal rights as a pre-condition for performance of its legal obligations.

5. Further as per clause 2.5(c) of the floor buyer agreement (Annexure P-6), a sum of ₹ 50,000/- has been charged as club membership charges. This has already been called for by the respondents vide offer of possession dated 22.07.2020. However, in violation of the promise, respondents have not built any club at the site of the project. Upon, enquiry, complainants were told that no club will be built in the colony and that they would provide services of club which was 4-5 Km away, outside the colony and shared by other residential complexes.

6. The letter of offer of possession and final demand includes item of "Cost Escalation" @ ₹99.30 per sq. ft. for which ₹ 1,97,011.20/- is demanded. This demand is totally unjustified and unexplained. No calculations have been disclosed by the respondent for arriving at that amount.

7. As per final offer of possession dated 22.07.2020, respondents have demanded the electrification charges under the head 'Electrification

and STP Charges' to the extent of ₹ 1,21,121.98/-. However, no infrastructure for the external electricity infrastructure along with laying of sub stations has been constructed by the respondents at the site and they have still furthered the demand for the corresponding charges.

8. Further, said letter of offer of possession contains a demand for GST. That this demand should be borne by the respondents because it is a consequence of delay in possession committed by the respondents. Even with grace period, possession ought to have been delivered on 26.10.2015. GST liability came into existence in the year 2017. This liability would not have arisen but for the delay caused by respondents in completion of construction and delivery of possession.

9. Complainants have filed the present complaint seeking legal and valid possession of the unit in question. Hence, the present complaint.

C. RELIEFS SOUGHT:-

10. That the complainants seek following reliefs and directions to the respondents:-

    i. Respondent No. 1 & 2 are directed to deliver legal, peaceful and vacant possession in accordance with the Clause No. 5.4 read with 1.27 of FBA dated 11.04.2012(actual date of FBA

is 22.04.2012) (Annexure P-5) and register conveyance deed of Floor;

ii. Respondents are restrained from demanding execution of the indemnity- cum-undertaking enclosed as Annexure-C with offer of possession letter (Annexure-13) and from demanding execution of any document which may have the effect of surrender, waiver or dilution of Complainant's legal claims;

iii. Respondent No. 1 & 2 are directed to pay interest for delay @MCLR+2% PA from 26.10.2015 till offer of possession in lump sum being at default of fulfilling its contract commitment ?

iv. Respondents should be directed to construct a club in the Project as promised in the Floor Buyer's Agreement;

v. Respondents should be directed to bear the GST costs which have arisen only due to their delay in completion and the money collected from complainants on this account be directed to be refunded along with interest @MCLR+2% PA or adjusted against the BSP in the final offer of possession to be legitimately sent by the Respondent.

vi. Respondents should be directed to reverse and cancel the additional demand for alleged cost escalation and the money collected from complainants on this account be directed to be refunded along with interest @MCLR+2% PA. Besides the BSP per sq. feet of the unit must be restored to its original cost..

vii. Respondent No. 3 is directed to quash all the invoices raised by them till date and the amount collected @ Rs 95,531.00 on 06.10.2020 as per Annexure P-15A is levied interest @ SBI MCLR + 2% till the actual handover of FLOOR and such accumulated amount commences with effect from the date of actual legal, peaceful and vacant possession by the Respondent No. 1 & 2

11. During the course of hearing, Mr. Sanjeev Bhat, complainant submitted that as per the latest submission of the respondents, the unit in question is incomplete and not ready for handover of possession. Therefore, the offer of possession issued to the complainants in the year 2020 could not be called a valid offer of possession as the unit was incomplete and without the receipt of occupation. Mr. Bhat further reiterated his averment with regard to refund of GST charges as the same were not payable by the complainants. He further alleged that electrification charges should also

be refunded as there is no electricity infrastructure at the site of the project. He and his wife, i.e., both the complainants are ready and willing to wait for possession of the unit after completion of all development works as per the terms and condition of the floor buyer agreement and grant of occupation certificate. He prayed that direction be issued to the respondent to deliver possession of the unit complete in all respects after obtaining occupation certificate and along with delay interest for delay caused in delivery of possession as per Rule 15 of the HRERA Rules 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed a detailed reply on 01.06.2022 pleading therein:

12. It is submitted that complainants in this case had booked a unit in the project being developed by the respondents on 22.09.2009 and opted for construction linked plan (CLP). On 16.03.2010, respondents duly allotted a unit bearing no. VL1-19-GF on the ground floor to the complainants. That, thereafter a floor buyer agreement was executed between both the parties on 27.04.2012. Respondents have admitted the allotment and execution of floor buyer agreement in favour of complainants. In terms of floor buyer agreement, respondents proposed to handover the possession of the unit within a period of 36 months from the execution of floor buyer

agreement or sanction of building plan, whichever is later along with a grace period of 180 days for filing and grant of occupation certificate. The delay caused in handing over of possession is due to circumstances beyond the control of the respondent i.e the force majeure conditions.

13. The respondents vide offer of possession dated 22.07.2020 offered the possession of the unit to the complainants, wherein as per agreed construction linked plan the respondents raised the demand of ₹ 14,88,503.87/-. In order to amicably settle the grievances of the complainants qua said offer of possession, respondents vide email dated 19.08.2020 offered a special credit herein referred as discount of ₹ 1,99,996/- to the complainants. It is further submitted that complainants vide email dated 19.08.2020 accepted the proposed offer in order to subrogate all grievances. Further complainants would not demand any delay compensation or refund from the respondent vide settlement dated 19.08.2020. In lieu of the special discount, complainants thereafter made a payment of ₹ 13,40,700/-.

14. That vide floor buyer agreement dated 27.04.2012, complainants had agreed to pay basic sale price for the unit along with DC,EDC,PLC,CMC,IFMS, Electrification charges, Power backup, Water connection charges, Electricity connection charges, cost of construction, which would constitute to the total basic sale consideration along with the

above mentioned charges which shall be referred as the 'Total Sale Consideration'.

15. It is denied that respondents have not applied for occupation certificate or that respondents have offered premature possession of the unit. Respondents have applied for occupation certificate for the project in question and are hopeful to receive it soon.

16. It is denied that respondents have not provided club space to the complainants. Respondents have already constructed a make shift club within the colony which is for the utility of the residents. Further, the complainant has agreed to transact the club membership charges vide clause 2.5(c) of the floor buyer agreement without demur.

17. It is denied that the respondents have raised illegal demands for escalation from the complainants. Vide clause 2.3 of the floor buyer agreement, the parties have agreed that if there may be any increase in the super built up area of the floor, the purchaser agrees to pay ₹ 2,500/- per sq. yd. Subsequently, if there is any increase in the plot size the purchaser agrees to pay an additional amount of @ ₹7,500/- per sq. yd.

18. It is submitted that all the allegations made by the Complainant in the interest of justice against the Respondents are malicious. It is submitted that all the Electrification Chargers were specifically mentioned in the floor buyer agreement, whereas the same was communicated to the

complainants along with the offer of possession, Annexure F of the OOP under the head of charges for additional infrastructure included Electricity connection charges (herein referred as the ECC), it was agreed by the complainants that the cost of sub-main wiring from the metre box along with the centralised three phase prepaid metering system chargers would be borne by the complainants. Further the Electrification and Sewage Treatment plant charges (herein referred as the E_STP) were calculated @₹895/-per sq. yd. and to be charged for each floor proportionately.

19. The VAT Chargers or the Service tax or the GST were to be borne by the Complainants, coupled with statutory obligation cast by the respondent upon the complainants vide relevant Clause 1.35 of the floor buyer agreement.

20. During the course of hearing, learned counsel for the respondents submitted that the construction of the project including the unit of the complainants would be completed by December 2023. Respondents will be in a position to offer possession of the unit without occupation certificate by February 2024. If the complainants are interested to possession of the unit without occupation certificate then, respondent company can offer possession to the complainants and also offer upfront payment of delay interest @ 9%.This offer was outrightly denied by the

complainants. Complainants submitted that they are ready to wait for the possession of the unit after grant of occupation certificate along with delay interest admissible in terms of Rule 15 of HRERA Rules 2017.

21. In view of the statement of the complainants, learned counsel for the respondent submitted that if the complainants are willing to wait for the occupation certificate, then respondents will issue an offer of possession to the complainants after receipt of the same. He further argued that the timely payment discount offered by the respondents on payments made within the time frame is a genuine act of good will on the part of the respondent and the same should not be considered as a part of total payment made by the complainants. The delay interest admissible to the complainants should only be calculated on the actual paid amount excluding the timely payment discount as the same is not actual money which has been utilised by the respondents.

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 5.1 of the Floor Buyer Agreement dated 27.04.2012, possession of the unit was to be delivered to the complainants within a period of thirty six (36) months from the

date of execution of floor buyer agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days, after expiry of 36 months, for filing and pursuing the grant of occupation certificate from the competent Authority. Respondents have nowhere disclosed the date of approval of building plans in their pleadings and no documents proving the date of approval of building plan are placed on record. Hence, if 36 months are considered to start from the date of execution of the agreement, the deemed date of possession works out to 27.04.2015. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. Further, the respondent too in its reply has not denied that the deemed date of possession shall start from the date of execution of the builder buyer agreement. Thus the respondent cannot be

allowed to take advantage of a vague and arbitrary drafting, and the deemed date of possession shall be computed from the date of execution of the builder buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement, i.e., immediately after completion of construction works within 36 months. Thus, the period of 36 months expired on 27.04.2015. 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 both parties with regard to offer of possession dated 22.07.2020.

As per clause 5.1 of the buyers agreement and observations recorded in E.I of this order, possession of the unit was to be delivered by 27.04.2015. Respondents issued an offer of possession for the booked unit to the complainants after a delay

of 5 years without obtaining occupation certificate. It is alleged by the complainants that the offer of possession dated 22.07.2020 was an incomplete offer of possession since the respondent had not obtained occupation certificate qua the project. Therefore, the complainants did not accept said offer of possession and have sought relief of delay interest on account of delayed possession till receipt of occupation certificate. It is the principal argument of the respondents that an offer of possession had been issued to the complainants in the year 2020 however, the complainants failed to accept said offer and take physical possession of the unit. However, during the course of hearing, learned counsel for the respondents has himself submitted that construction of the project including the unit of the complainant would be completed by December 2023. Further, respondents have yet to receive occupation certificate for the project in question. This statement aligns with the claim of the complainants that they did not accept the impugned offer of possession dated 22.07.2020 on account of deficiencies in services and non receipt of occupation certificate. In light of the above facts, it can rightly be ascertained that in fact the unit booked by the complainants was not complete at the time of

offer of possession dated 22.07.2020 and that a legally valid possession has not been issued to the complainants. Authority has laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goy*al Vs. Omaxe Ltd.*.** Relevant part of the said order is reproduced below:

> *"7. At this stage, the Authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:*
> *(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.*
> *(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment*

within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc. from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such. minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii) ……."

Since at the time of offer of possession, respondent had not received occupation certificate qua the project in

which the unit of the complainants is situated, therefore offer of possession dated 22.07.2020 cannot be called a valid offer of possession in terms of principles laid down by this Authority in Complaint No. 903 of 2019. Therefore, a valid offer of possession is yet to be made to the complainants. Complainants are entitled to receive delay interest on account of delay in delivery of possession from deemed date of possession till receipt of occupation certificate. Authority deems fit to issue directions to respondent to make a fresh legal offer for possession of booked unit complete in all respects after obtaining Occupation Certificate in terms of the principles laid in this order.

E.IV Objection raised by both parties with respect to the dispute demands raised along with offer of possession dated 22.07.2020.

Club Membership Charges (CMC):

In regard to the club membership charges, it has been alleged by the complainants that a sum of ₹ 50,000/- has been imposed as club membership charges by the respondents,

however, there is no club available at the site of the project. In its reply respondent has stated that they have already constructed a make shift club within the colony which is for the utility of the residents. It is pertinent to mention that the complainants have not disputed the claim of the respondent with regard to the existence of club at the site of the project neither these charge have been objected to at the time of the hearing. In the relief sought complainant is seeking direction against the respondents to construct a club as promised in the buyer's agreement. As per clause 1.8 of the floor buyer agreement, respondent has promised to provide a club in the colony for the usage of the purchasers. In compliance of it, respondent has already provided arrangement of make-shift club to the allottees of the project. Neither respondents nor complainant have placed on record as to what all facilities are available in the make shift club and what all are remaining as per the agreement. Further, on perusal of builder buyer agreement, it is revealed that no list of facilities/services which would be available in the club of the project has been detailed out in the agreement. In these circumstances when proper documentary evidence is not available on record, it is difficult

to adjudicate the issue. However, the complainant who has already paid for club membership charges shall make use of shift club till the time proper facility of club is being provided by respondent at site. Respondent is also directed to expedite the process of providing proper facility of club to the allotees in the project in not later than 90 days of uploading of this order.

Goods and Services Tax:

In the instant case, vide offer of possession dated 22.07.2020, a demand of ₹ 2,30,754/- has been raised by the respondents on account of Goods and Services Tax(GST). Regarding the GST the arguments of the complainants is that this tax came into force in the year 2017, therefore, it is a fresh tax. The possession of the apartment was supposed to be delivered by October 2015, therefore, the tax which has come into existence after the deemed date of delivery should not be levied being unjustified. The arguments of the respondent are that this is a tax levied by the State and this amount has to be deposited to the State, therefore, a demand on this account is fully justified.

Admittedly, the delivery of the apartment has been delayed by more than 5 years. Had it been delivered by the due date or even with some justified period of delay, the incidence of GST

would not have fallen upon the buyers. It is the wrongful act on the part of respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of the complainants in this regard. For the inordinate delay by the respondent in delivering the apartments, the incidence of GST should be borne by the respondent only. It is also observed that the amount of GST which is being demanded may not actually be leviable on the units purchased by way of construction linked payment plans. Therefore, the demand raise on account of Goods and Services tax is quashed.

Cost Escalation Charges:

This Authority has already decided the issue concerning cost escalation charges vide detailed judgement passed in Complaint no. 113 of 2018 tittled case Madhu Sareen Versus BPTP Ltd decided on 16.07.2018. The respondent is accordingly directed to work out the cost escalation charges in consonance with the principles laid down in the said judgement. Relevant para of said order is reproduced below for ready reference:

> " *(iv)* ***Cost escalation***:
> *In the lead case, vide letter dated 21.3.2018 the respondents have demanded Rs.8.34,190/- towards cost escalation from the complainant. Clause 12.11 of*

the flat buyer agreement deals with the cost escalation. The said clause 12.11 is reproduced below:-

"that the purchaser(s) understands and agrees that the basic sale price is escalation free except a situation where the cost of steel, cement and other construction materials increase beyond 10%. It is further agreed and understood that the steel price of Rs.27500/- per ton and prices of other construction material has been taken as per index price as on 1.9.2009. The company is fully authorised to revise the cost of construction materials, based on market conditions. The reasons, if any, shall be intimated to the purchaser(s) at the time of possessions. The purchaser(s) agrees and undertakes to unconditionally accept the price revision and pay the escalated amount without any objection or challenge whatsoever."

The operative part of above said Clause 12.11 is that basic sale price is escalation free except in the situation where the cost of steel, cement and other construction materials increase beyond 10%. Accordingly, no escalation charges can be levied in case the increase in cost of these materials is less than 10%. It also means that escalation up to 10% was already accounted for in the basic price charged from the buyers.

In the above context certain facts needs to be noted. The flat buyer agreement in the case of lead complaint No.113/2018 was executed by both the

parties on 15.1.2011. It was agreed that the possession of the apartment will be given within 36 months. A further grace period of 180 days was agreed for the purpose of applying and obtaining occupation certificate. The period of 36 months expired on 15.01.2014 and further grace period of six months is expired on 15.07.2014. The possession of the apartment should have been delivered by 15.07.2014. However, by virtue of Clause 3.3 of the agreement, the date of delivery of possession works out to 06.11.2014. Admittedly the possession has been offered on 21.03.2018 thus with a delay of 4 years and 4 months.

Both the parties argued about the basis on which the escalation in cost may be calculated. While the respondents proposes to calculate the escalation in cost on the basis of the table applicable to the Central Public Works Department (CPWD) the complainants wants it to be calculated on the basis of the table applicable to the Construction Industries Development Corporation (CIDC). By adopting the table of CIDC the increase in price is lower as compared to the price calculated on the basis of CPWD table. They argued that the table which create lesser liability on the allottees should be used.

Before deciding the basis of calculating the escalation in prices, it may be relevant to decide the date up to which the escalation in prices may be allowed. The respondent in their letter dated

21.03.2018 addressed to the complainant have not given any basis for calculation of the cost escalation nor have they indicated the date up to which the escalation in cost has been calculated.

The question that arise before this Authority is whether the cost escalation should be allowed up to the deemed date of possession i.e. 06.11.2014 or up to actual date of offer of possession i.e. 21.03.2018. Admittedly, almost entire sale consideration was paid by the complainant to the respondents up to the year 2012. No default on the part of the complainant in making payment to the respondents has been alleged with any substantive evidence. Admittedly, the project has been delayed by over 4 years for no fault on the part of the complainant. It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing the flat buyer agreement i.e. 15.01.2011 up to the deemed date of delivery of possession after grace period i.e. 06.11.2014. No escalation in cost can be allowed after 06.11.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant.

Now, comes the issue of the basis of calculating the cost escalation. The prices of steel, cement and other construction materials fluctuate widely. It will be a very difficult accounting exercise to work out the

actual escalation in the costs of these materials during the aforesaid period up to the deemed date of offering possession. Necessarily, therefore, some standard index will have to be followed. The dispute is whether CPWD or CIDC table should be adopted.

CPWD is a public works department of the Central Government. It is presumed that they factor in all facts and circumstances while revising cost index of various materials. This Authority, therefore, orders that the CPWD table shall be followed to calculate escalation in cost of construction between the period of flat buyer agreement and the deemed date of possession. These dates may vary in each individual case being disposed off through this common order. The respondent will recalculate the cost of escalation on the basis of above principle and communicate the revised escalation in cost to the complainants. Further, these calculations will be made only in respect of increase in the cost beyond initial 10% because 10% increase has already been accounted for in the basic cost charged from the buyers. "

E.V Objection raised by the complainants with regard to the demands raised by respondent no. 3 vide demand letter dated 23.07.2020.

It is submitted that respondent no. 3 ,i.e., Business Park Maintenance Services Pvt Ltd. had raised a

demand of ₹ 95,531/- vide demand letter dated 23.07.2020 from the complainants on account of - Administrative Charges, Maintenance charges and IFMS charges. These demands have been paid by the complainants on 06.10.2020. However, it has been alleged by the complainants that the charges collected by the respondent number 3 were to commence from the date of actual and valid offer of possession. Since the offer of possession dated 22.07.2020 was without occupation certificate, hence a valid offer of possession is yet to to be issued to the complainants. Respondent cannot collect these charges from the complainants till the date of valid possession.

As per clause 1.3 (Administrative Charges), 1.20 (IFMS charges), 1.24, 1.25(Maintenance charges), Clause 9 of the floor buyer agreement, the complainants have agreed to pay these charges after offer of possession to the respondent no. 3. As per facts, respondent no. 3 had raised these demands from the complainants vide demand letter dated 23.07.2020 i.e after offer of possession being issued by the

respondent no. 1 & 2 on 22.07.2020. However, as per observations recorded in para EII of this order it has been observed that the offer of possession dated 22.07.2020 is not a valid offer of possession and accordingly respondent no. 3 could not have raised these demands from the complainants without obtaining the occupation certificate and completion of construction work. Respondents in its reply have failed to provide justification for raising these alleged demands without providing a valid offer of possession. Since as per para EII of this order a valid offer of possession is yet to be made to the complainant, these charges cannot be allowed at this stage.

Fact of the matter is that the complainants have already made payment of these demands to the respondent on 06.10.2020. Since the complainants are willing to stay with the project and wait for a valid offer of possession after receipt of occupation certificate, these demands will remain payable by the complainants to the respondent no. 3 at the time of fresh offer of possession. Respondent no. 3 has already

received an amount of ₹ 95,531/- from the complainants on account of Administrative Charges, Maintenance charges and IFMS charges. Therefore, this payment is directed to be adjusted by the respondent no. 3 at the later stage, when fresh demands will be raised from the complainants at the time of fresh offer of possession.

22. Admittedly, in this case a unit had been booked by the complainants in the project of the respondent on 25.09.2009. Vide allotment letter dated 16.03.2010, complainants were allotted unit no. VL1-19-GF, measuring 1402 sq. ft. Park-81, Parklands, Faridabad. A floor buyer agreement qua the said unit was executed between both the parties on 27.04.2012. As per clause 5.1 of the agreement and the observations as recorded in subheading 'E-II' of this order, possession of the unit should have been delivered by 27.04.2015. An offer of possession had been issued to the complainants on 22.07.2020. However, said offer of possession was not acceptable to the complainants as the unit was yet to receive occupation certificate. As per the submission of the learned counsel for the respondent orally submitted that the construction of the project including the unit of the complainant would be completed by December 2023. Thereafter, respondents will be in a position to apply for occupation

certificate. It is noteworthy that even at present respondents are not in a position to issue a valid offer of possession to the complainants along with receipt of occupation certificate. During proceedings, complainants have submitted that they are willing to stay with the project and wait for delivery of possession of the unit complete in all respects after obtaining occupation certificate and along with delay interest for delay caused in delivery of possession as per Rule 15 of the HRERA Rules 2017.

23. The facts set out in the preceding paragraph demonstrate that construction of the project has been delayed beyond the time period stipulated in the buyer's agreement. Despite a lapse of more than eight years, respondent is not in a position to deliver possession to the complainants. Learned counsel for the respondents has submitted that the completion of construction works will take further time and thus the delivery of possession of the unit will be further delayed. In view of the submission of the learned counsel for the respondents, Authority observes that the respondents have failed to fulfil its obligation to deliver possession of the unit within time period stipulated in floor buyer agreement dated 27.04.2012. Complainants, however, do not wish to withdraw from the project and are rather interested in getting the possession of their unit. Complainants have clearly stated that they are ready to wait for possession of the unit after completion of construction

and receipt of occupation certificate. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. In this case, the offer of possession dated 22.07.2020 made to the complainants has been deemed as invalid as per the observations recorded in para EII of this order. Therefore, a valid offer of possession is yet to be made to the complainants. So, the Authority hereby concludes that the complainants are entitled to receive delay interest from the deemed date i.e, 27.04.2015 up to the date on which a valid offer is sent to them after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the 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".."

24. 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., 16.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

25. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate

prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from from the due date of possession, i.e., 27.04.2015 till the date of a valid offer of possession.

26. Authority has got calculated the interest on total paid amount from due date of possession and thereafter from date of payments whichever is later till the date of this order, i.e., 16.11.2023 in respective complaints as mentioned in the tables below:

Complaint no. 1218 of 2021:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 16.11.2023 (in ₹)
1.	44,96,618.62/-	27.04.2015	41,39,907/-
2.	40,889/-	02.12.2016	30,600/-
3.	1,532/-	17.02.2020	618/-
4.	5,00,000/-	18.02.2020	2,01,452/-
5.	10,00,000/-	20.08.2020	3,48,712/-
6.	3,30,645/-	20.08.2020	1,15,300/-
7.	39,680/-	06.10.2020	13,288/-
8.	55,851/-	06.10.2020	18,703/-

Total:	64,65,215.62/-		48,68,580/-
Monthly interest:	64,65,215.62/-		57,124/-

Complaint no. 1221 of 2021:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 16.11.2023 (in ₹)
1.	28,55,280.70/-	11.04.2015	2642230/-
2.	6,00,000/-	18.08.2020	2,09,581/-
3.	45,820/-	17.09.2020	15600/-
4.	29,560/-	17.09.2020	10,064/-
5.	2,62,000/-	30.09.2020	88,199/-
6.	3,59,484.46/-	21.02.2020	1,44,520/-
Total:	41,52,145.16/-		31,10,194/-
Monthly interest:	41,52,145.16/-		36,687/-

pertinent to mention that in the captioned complaints, complainants have received timely payment discount from the respondent as a credit towards payment made within the prescribed time. As a benefit, the said discount was credited towards the total sale consideration made by the complainants and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the

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

F. DIRECTIONS OF THE AUTHORITY

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

(i) In Complaint No. 1218 of 2021, respondents are directed to pay upfront delay interest of ₹ 48,68,580/- (till the date of order, i.e., 16.11.2023) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 57,124/-

(admissible from 17.11.2023 till the date of valid offer of possession after receipt of occupation certificate).

(ii) In Complaint No. 1221 of 2021, respondents are directed to pay upfront delay interest of ₹ 31,10,194/- (till date of order, i.e.,16.11.2023) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 36,687/- (admissible from 17.11.2023 till the date of offer of possession after receipt of occupation certificate).

(iii) Respondents shall issue an offer of possession to the complainants, in respective complaints, within a period of one month from the date of receipt of occupation certificate. Said offer of possession shall be inclusive of a detailed statement of payable and receivable amounts including the delay interest admissible to the complainants on account of delay caused in delivery of possession.

(iv) Complainants, in respective complaints, will remain liable to pay the balance consideration amount to the respondents at the time of possession offered to them.

(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, 10.75% by the respondents/ promoters which is the same rate of interest which the promoters shall be liable to pay to the allottees.

(vi) The respondents shall not charge anything from the complainants, in respective complaints, which is not part of the agreement to sell.

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

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

.....
NADIM AKHTAR
[MEMBER]