



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2087 of 2023
Date of filing.:	22.09.2023
First date of hearing.:	22.11.2023
Date of decision.:	10.09.2024

1. Smt. Nitika Jain W/o Sh. Sachin Jain
2. Sh. Sachin Jain S/o Late Sh. H.C. Jain
Both R/o 404, Tower-C, Park View City 2,
Sector 49, Sohna Road, Gurgaon-122018

...COMPLAINANT(S)

VERSUS

1. M/s BPTP Limited
2. M/s Countrywide Promoters Pvt. Ltd.
3. M/s BPTP Parkland Pride Limited
Registered office for all 3 respondents M-11,
Middle Circle, Connaught Circus,
New Delhi- 110001

...RESPONDENTS

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

Hearing: 4th

Present: - Sh. Akshat Mittal, Counsel for the complainants
 Sh. Hemant Saini, Counsel for all the respondents.

Dr. Geeta Rathee

ORDER:

1. Present complaint has been filed on 22.09.2023 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 fulfill 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 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 Elite Floors, Sector 75-89, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of originally allotted unit.	Originally allotted unit- H2-33-GF measuring 1418 sq.ft. on 18.05.2009
6.	Date of original builder buyer agreement	31.05.2010



	(herein after referred as BBA)	
7.	Possession clause in original BBA dated 31.05.2010 (Clause 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 but subject to the purchasers) 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 other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or on completion of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser(s), whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one



		hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and 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).
8.	Total/Basic sale consideration as per original agreement	₹25,56,002/-
9	Re-allotted unit vide second BBA	PE-122-GF measuring 1510 sq. ft. on 31.05.2012
10	Second BBA	17.04.2013
11.	Due date of possession as per second BBA 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 but subject to the purchasers) having



		<p>complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanctioning of the building plan whichever is later. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated.</p>
12.	Basic Sale Price of unit as per second BBA	Rs. 27,79,101.72/-
13.	Amount paid by complainants till year	₹28,65,914/-



	2017	
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B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANTS 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 Sector 75-89 Faridabad, Haryana on 18.05.2009 upon payment of ₹ 3,00,000/- as booking amount. Complainants were allotted unit no. H2-33-GF, measuring 1418 sq. ft. Ground Floor, Park Elite Floors, Faridabad vide allotment letter dated 18.05.2009. A builder buyer agreement (hereinafter referred as BBA) was executed between both the parties on 31.05.2010. 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 execution of floor buyer agreement or on completion of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser(s), whichever is later. From the date of execution of the agreement, the deemed date of possession works out to 31.05.2012. However, respondent failed to offer possession within time period stipulated in the agreement.
4. It is submitted that builder buyer agreement was supposed to be signed immediately but due to delay on part of the respondent, builder buyer



agreement got signed between the parties on 31.05.2010 i.e. after a delay of 12 months from receiving the booking i.e. on 18.05.2009. Nevertheless, parties were acting and performing their part of the contract in the terms agreed between the parties at time of booking, making payments thereof and issuance of receipts from the side of respondent. Before signing the original agreement dated 31.05.2010, respondent had already collected an amount of ₹ 8,08,144.2/- from the complainants. Receipts of the above said paid amounts are annexed at page no. 40-43 of the complaint book.

5. Further, complainants have referred to a judgment passed by **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure & Anr**, whereby 3 years has been taken to be a reasonable time to handover possession to the allottee. In that case, also respondent was bound to offer possession to complainant by 3 years from date of booking i.e. (18.05.2009) and possession was to be handed over by 17.05.2012. However, there was no sign of construction at that point of time at project site. Further, complainants referred to various communications made by complainants dated 04.12.2010, 24.04.2011, 27.05.2012 etc to respondent while enquiring about delay in delivery of possession.



6. Surprisingly complainant received a letter dated 31.05.2012 with regard to re-allotment of unit issued by respondent for the reasons beyond their control. Now, respondent had re-allotted unit no. PE.122-GF measuring 1510 sq.ft. to complainants without any justification. Re-allotment was also protested by complainants. Although complainants have issued consent letter under protest on 13.06.2012. After re-allotment, respondent again had failed to execute fresh BBA with complainants. Complainants even wrote letter dated 25.06.2012 to respondent for making new agreement effective from original agreement date and thus requested to keep the dates same. Since possession was already delayed, complainants wrote another letter dated 26.06.2012 to respondent seeking delay charges and compensation. On 17.04.2013, respondent executed the second BBA for reallocated unit no. PE- 122-GF measuring 1510 sq.ft. The said agreement was also signed under protest as certain clause were arbitrary on part of respondent and same was communicated to respondent by complainants vide letter dated 18.03.2013. As per clause 5.1 of second BBA , deemed date of possession was 16.04.2015 i.e within 24 months from execution of builder buyer agreement or sanctioning of building plans which ever is later. Complainants had paid an amount of ₹ 28,65,914/- to respondent by year 2017.



7. That respondent had already collected huge amount of ₹ 10,22,831.15/- before the execution of second BBA for re-allotted unit. Till that point of time complainant was put in a one-sided arbitrary agreement and complainant had no choice but to yield to the demands of the respondent by signing alleged one sided and arbitrary agreement having inequitable clauses. By signing said agreement the starting date for determining the deemed date of possession which ought to have been taken from date of booking or original agreement dated 31.05.2010 got arbitrarily pushed in terms of clause 5.1 stipulated in second agreement dated 17.04.2013 i.e. 24 months from execution of builder buyer agreement or sanctioning of building plans whichever is later. Accordingly, 24 months from execution of agreement works out to be 16.04.2015.
8. Furthermore, complainants stated that respondent had demanded certain illegal charges from complainants on following accounts:
- i. Demand of Value Added Tax (VAT):- Respondent raised demand vide letter dated 09.11.2016 on account of VAT and stated it to be paid by 25.11.2016. In this respect, complainant stated that VAT was introduced in year 2014, however as per original agreement respondent was bound to deliver possession by 30.05.2012. In present case, unit was originally booked in year 2009 and possession was to be handed over by year 2012 but due to failure on part of respondent in not developing the project as


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promised, complainants was forced to take re-allotment of another unit. Furthermore, it is stated that once complainants had paid the service tax, respondent cannot demand additional tax on pretext of VAT it will rather amount to dual taxation which is illegal on part of respondent –promoter. Complainants had placed on record various communication dated 20.12.2016, 01.01.2017, 14.01.2017 regarding the protest against the said demands.

ii. GST charges:- In furtherance to preceding para, GST is also not applicable, since same had come into picture subsequently i.e. after deemed date of possession i.e. 30.05.2012.

iii. Cost of construction:- Respondent had increased the cost of construction, and same was also contested by complainant vide email dated 11.08.2017

9. Further, complainants stated that after delay of almost 8 years from booking, complainants after losing all hope of getting their home even had requested respondent to refund their paid amount and seeking compensation for delay vide communications dated 24.07.2017 and 23.05.2023 but all in vain, respondent till date neither handed over possession nor refunded the paid amount to the complainants. Further it is mentioned that respondent on 15.07.2023 had sent two emails to complainants. First email having subject "proposal for alternative


G. Rathee

options” was sent by respondent wherein, respondent had offered 3 alternatives options to complainants including refund with 9% simple interest or option to sign an amended builder buyer agreement and second email received on the same date mentioned to ignore the earlier alternative option email.

10. To clarify the actual position, complainants went to office of respondent in New Delhi on 16.08.2023, where respondent shared statement of account of receivables and payable (herein after referred as SOA) with complainants. In said SOA, respondent had imposed illegal demands such as:- ₹ 50,000/- on account of club charges, when there is no club in the project in question. Further, demand on account of enhanced EDC and interest thereto amounting to ₹ 24,15,640/- which is already declared in many other cases to be void as same is not allowed to be charged. Unilateral increase in basic sale price at incremental rates- in present case earlier booked unit in year 2009 was of 1418 sq.ft and reallocated unit was increased to 1510 sq.ft. Meaning thereby, increase of 92 sq.ft was unilaterally done by respondent and respondent is charging for said area at the rate of 2425/- per sq.ft, whereas original area was charged by respondent for 1802.54/- sq.ft. Further respondent raised illegal demand for IDC, STP and electrification charges, which are already part of EDC charges.



11. After the above stated physical meeting held on 16.08.2023, respondent sent another email dated 17.08.2023 with a proposal to offer alternate options or refund @ 6%. To this email, complainants showed their non-acceptance vide email dated 30.08.2023. On 07.09.2023 respondent issued another email and stated that as complainants had not opted for any options given. To avoid paying further delay compensation company pursue the option for refund with interest. Vide letter dated 08.09.2023, complainants replied to respondent for seeking possession booked unit with interest only. Since, respondent till date had not handed over possession to complainants, left with no other option complainants had filed the present complaint seeking possession of booked unit i.e. PE-122-GF along with delay interest as prescribed under RERA Act 2016 along with quashing of all illegal demands raised by respondent.

C. RELIEF SOUGHT

12. That the complainant seeks following relief and directions to the respondents:-
1. Direct the respondent to deliver immediate possession of the unit PE-122-GF in BPTP Park Elite floors, Faridabad after due completion and receipt of Occupancy and completion certificates.


R. K. Rana

2. Direct the respondent to compensate the complainant for the continuing delay in offer and handing over of the possession of the unit to the complainants, by paying delayed possession charges as prescribed under the Real Estate(Regulation and Development) Rules, with effect from the due date of possession i.e. 30.05.2012 till the actual and legal handing over of possession of unit complete in all respects, on the entire amount deposited by the complainants.
3. Further to set aside and quash the exorbitant demands qua enhanced E.D.C., club charges, interest, I.D.C., VAT, GST etc. the same be called uncalled illegal. Respondent be directed to refund the amounts, if any already taken qua EEDC and other aforesaid charges.
4. Further to restrain respondent from creating any third party rights in the unit in question allotted to the complainant.
5. To restrain respondent from unilaterally trying to cancel the booking of complainants and refunding the amounts without consent.
6. Direct the respondents to pay a sum of ₹ 50,00,000/- on account of grievance and frustration caused to the complainants.



7. The registration if granted to the respondents for the project in question under RERA may kindly be revoked under Section 7 of RERA for violating the provisions of the Act.
8. To impose penalty on respondents under Section 61 of the Act for contravention on the provisions of the Act.
9. The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-.
10. 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.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

13. Learned counsel for the respondents filed detailed reply on 12.02.2024 pleading therein:

Respondents stated that complainants were provisionally allotted unit no. H2-33-GF vide allotment letter dated 24.12.2009. However with consent of complainants, they were re-allotted a residential unit no. PE-122-GF on ground floor admeasuring 1510 sq.ft. Thereafter, builder buyer agreement was executed between parties on 17.04.2013 as per new unit. As per clause 5.1 of bba respondent had to deliver possession within 24 months from date of execution of bba or date of sanctioning of building

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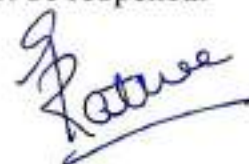
plan, which ever is later along with grace period of 180 days. Further respondent relied upon judgment passed by Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in **Appeal no. 122 of 2022** titled as **Emaar MGF Land Ltd Vs. Laddi Paramjit Singh**, which states that if grace period is mentioned in the clause, the benefit of the same be given. In present case deemed date of possession has yet not be arrived as building plans were sanctioned on **02.01.2024**, so deemed date of possession comes to 02.07.2026. Therefore, Section 18 cannot be made applicable. Furthermore, respondents have relied upon Hon'ble Supreme court judgment titled as **Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.** which states that right of an allottee seeking refund arises only upon non- fulfilment of obligation by the promoter. Since due date has not arrived in present case and respondent had not failed to perform any obligation present compliant is premature and liable to be dismissed.

14. Respondents stated that in present case deemed date of possession was also subject to force majeure conditions 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. After lifting of the ban it took some time to mobilize the resources and begin construction of the project. Thereafter,



due to the sudden outbreak of the coronavirus (COVID 19) all the activities across the country including the construction of the projects came to a halt. He submitted that force majeure on different accounts including Covid-19 outbreak for relaxation be taken into consideration as Covid-19 outbreak lead to delay in handing over of possession, thus, the Covid-19 period may be taken as zero period for the purpose of calculation of delay possession interest. Secondly, timely payments by the complainants were essential for completion of project on time but due to number of defaulter allottees in the project including present complainants project got delayed.

15. Respondent has submitted that respondent no.1 has issued a letter dated 17.08.2023 vide which several options were given to complainants to amicably settle the matter. Complainants have failed to choose from the available option as per terms and condition of the letter dated 17.08.2023, the option of refund along with at the rate 6% simple interest was availed by the complainant.
16. Further, respondents have challenged the maintainability of the present complainant on the ground that builder buyer agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

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E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. After perusal of file Authority observes that captioned matter was heard at length on last date of hearing i.e. 21.05.2024 and case was fixed for pronouncement of judgment for today. Relevant portion of arguments put forth by both counsels are reproduced below for ready references:

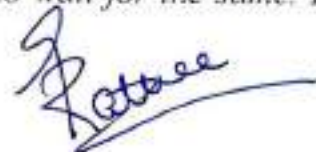
"7. Learned counsel Sh. Hemant Saini, appeared for respondents and stated that occupation certificate for booked floor by complainants has not been obtained by respondent till date, therefore, respondents are not in position to immediately handover possession accompanied by an occupation certificate. However, learned counsel for respondents offered the complainants to take alternative unit having occupation certificate or to take refund of the amounts paid by them to respondents as per Section 18 of RERA Act.

8. Sh. Akshat Mittal, counsel for complainants vehemently denied to accept both the offers made by counsel for respondents and stated that complainants only seeks possession of unit no. PE-122-GF allotted to him along with delay interest to be awarded by Authority from deemed date of possession i.e. 30.05.2012 calculated from date of original agreement till date of legal offer of possession i.e. after obtaining occupation certificate.

8. Sh. Hemant Saini, counsel for respondents stated that if complainants are only willing to stick by the relief sought by them in the captioned complaint, then there are two payments amounting to ₹ 1,15,020/- as inaugural discount and ₹ 84,904/- which were accounted or adjusted in the accounts of complainants by respondent as a good will gesture for making timely payments to respondent. He stated that the said two amounts are included in the amounts paid by complainants and reflected in the account of complainants though same were never actually paid by them. Therefore, while taking into consideration total amounts paid by complainants for the purpose of making calculation for delay interest, these two mentioned amounts be deducted from total paid amounts by complainants. Further, he submitted that force majeure factors such as Covid-19 be considered as zero period for the purpose of calculation of delay possession interest.

11. Learned counsel for respondent further encapsulated his arguments in following points:

- i. Respondent counsel stated that occupation certificate for unit in question has yet not been received by respondent, however complainants are willing to wait for the same. For*



computing the delay period, deemed date of possession be taken as per agreement dated 17.04.2013. Since complainants nowhere in their relief clause had challenged the authenticity of new builder buyer agreement. He further stated that in case, first agreement is taken into consideration for computation of deemed date of possession, then what will remain the sanity of agreement executed between parties as agreement dated 17.04.2013 is signed in english by complainants voluntarily and in full knowledge.

- ii. *Further, respondent counsel stated that both parties are bound by the terms of agreement. if complainant is relying upon clause of agreement for making a case for delay of handing over of possession than respondent had also certain clause which bound the complainants to be abide by terms of agreement only. To further relied upon a judgment passed by Hon'ble Apex Court in case of Bharathi Knitting Company vs DHL Worldwide Express Courier year 1996 which provides for enforcement of agreement in totality".*

From above paras it is clear that project is not complete since respondent had failed to obtain occupation certificate till date. Although respondent counsel had made proposal to complainants but complainants are only interested in taking possession of the booked unit in question along with occupation certificate and they are ready to wait for the same. In view of above Authority deals with the present complaint on merits below:

Findings on the objections raised by the respondent.

- 18. Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.**

One of the averments of respondents are that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondents have argued



that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act, 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd** decided on 16.07.2018. Relevant part of the order is being reproduced below:

"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However,



before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreements dated 31.05.2010 and subsequent agreement 17.04.2013 are admitted by the respondent. Said builder buyer agreement were binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per

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last agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

19. Objections raised by the respondent regarding force majeure conditions.

The obligation to deliver possession within the period stipulated in the Builder Buyer Agreement i.e., 24 months from the date of execution of builder buyer agreement or sanctioning of building plan which ever is later was not fulfilled by respondent till date. There is delay on the part of the respondent and 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 as per original agreement and year 2015 as per second agreement. 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 (I) (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 septemeber,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."

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.

20. **Findings on the relief sought by the complainants i.e to direct the respondent to handover possession of booked unit alongwith delayed possession charges at the prescribed interest per annum from the deemed date of possession i.e. 30.05.2012 derived from first agreement dated 30.05.2010.**



i) In the present complaint, the complainants intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".

ii). Clause 4.1 of BBA of first/original agreement dated 30.05.2010 provides for handing over of possession and is reproduced below:-

Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four



(24) months from the date of execution of floor buyer agreement or on completion of 35% of the basic sale price alongwith 20% of EDC and IDC by the purchaser(s), whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and 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).

iii) Clause 5.1 of BBA of second agreement allotting unit in question executed on 17.04.2013 provides for handing over of possession and is reproduced below:-

"Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the 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 other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or



sanctioning of building plans which ever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the building of three independent residential floors including the floor. 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)."

It is the argument of Id. counsel for complainants that deemed date of possession for awarding delay interest i.e 24 months be computed as per clause 4.1 of original agreement i.e. 30.05.2012 instead of clause 5.1 of the new agreement dated 17.04.2013 for the reason that contract/agreement by way understating was already in existence between the parties for the delivery of possession of unit which in essence started from first agreement executed between parties and it is only because of respondent inability to deliver possession of earlier allotted unit, respondent reallocated unit in question and got the new bba executed on 17.04.2013, which further pushed the deemed date of possession to 24 months from execution of builder buyer agreement, which comes to 17.04.2015. Further, it has been

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argued that an amount of ₹ 10,22,831.15/- was already received by the respondent out of total paid amount of ₹ 28,65,914/- before the execution of second BBA. So, complainants have no say in drafting of second agreement. Complainant had orally as well as in their pleading had stated that second agreement was signed under protest.

In rebuttal, ld. counsel for respondent submitted that builder buyer agreement was signed by complainants voluntarily and similarly payments have also been paid by complainants after signing second buyer agreement dated 17.04.2013 without any objections. It is only at the time of filing of complaint that such sort of allegations/objections have been raised by complainants orally. However complainants have nowhere in their relief clause annexed in present complaint has challenged the authenticity of second buyer agreement dated 17.04.2013.

Arguments of both parties were heard meticulously. Authority observes that complainants had applied for booking of unit no. H2-33-GF in project of respondent on 18.05.2009 by making payment of Rs 3,00,000/-. However, same was reallocated to PE-122-GF and subsequently second builder buyer agreement was executed on 17.04.2013 for re-allotted unit. Now, the issue which need consideration is that which out of two

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agreements dated 31.05.2010 and 17.04.2013 be considered for determining the rights and obligation of the parties. In this regard Authority observes that the complainants in the pleading have taken a plea that the subsequent agreement dated 17.04.2013 was signed under protest, and therefore the first builder buyer agreement be considered to determine the deemed date of possession. However, on perusal record it is observed that there is no such document/ communication being placed on record by complainants to prove that the second subsequent agreement dated 17.04.2013 was executed under protest. The proceedings are summary in nature and parties are requested to place on record document to prove their contentions. In absence of any such documents on record, it cannot be ascertained that the subsequent agreement dated 17.04.2013 was signed under protest. Further, authenticity of the subsequent agreement has not been challenged or objected. Therefore, subsequent agreement dated 17.04.2013 will be considered as the final document to determine the rights and obligations of the parties inter-se. Furthermore, Authority is of the view that act of payments by complainants and issuance of receipts by the respondents shows an understanding vide which respondent received amount of ₹ 14,53,836.75/- after executing second builder buyer agreement



dated 17.04.2013 and ₹ 28,65,914/- in total till date against the booked unit. Since complainants and respondents had executed the second builder buyer agreement on 17.04.2013, an agreement duly executed by parties cannot be ignored in totality for declaring the whole of document as arbitrary or unreasonable. Also, the terms of agreement attained finality only when the builder buyer agreement was signed by both the parties. The BBA dated 17.04.2013 was the subsequent document to the booking/allotment /first builder buyer agreement vide which all the terms of the agreement were crystallized with the consent of both the parties. However, a distinction can be made between the reasonable and unreasonable clauses of BBA for deciding the rights of the allottee in terms of the prevalent laws. Lastly, no communication with regard to objection to execution of second BBA has been placed on record by the complainant till date.

In view of aforesaid discussion, the relief of awarding the delay interest from deemed date of possession i.e. 30.05.2012 of first agreement is rejected. Reliance is placed upon the judgment dated 07.09.2022 passed by Hon'ble Supreme Court in **Special Leave Petition (Civil) no. 15989 of 2021** titled as **Babanrao Rajaram Pund vs M/s Samarth Builders & Developers & Anr.**, relevant part of which is reproduced below for reference:-



"27. There is no gainsaying that it is the bounden duty of the parties to abide by the terms of the contract as they are sacrosanct in nature, in addition to, the agreement itself being a statement of commitment made by them at the time of signing the contract. The parties entered into the contract after knowing the full import of the arbitration clause and they cannot be permitted to deviate therefrom.

28. It is thus imperative upon the courts to give greater emphasis to the substance of the clause, predicated upon the evident intent and objectives of the parties to choose a specific form of dispute resolution to manage conflicts between them. The intention of the parties that flows from the substance of the Agreement to resolve their dispute by arbitration are to be given due weightage."

As per second buyer agreement dated 17.04.2013, deemed date of possession as per clause 5.1 was within 24 months from date of execution of BBA or sanctioning of building plans whichever is later. At the outset, in present case respondent stated at para 9 of reply that building plan was approved on 02.01.2024, due to which deemed date of possession comes to 02.07.2026, which makes the present complaint premature as the deemed date of possession has yet not arrived. After perusing reply, Authority observes that respondent had taken stand that building plan got approved on 02.01.2024 although no document or letter sent by respondent to concerned department seeking or applying for the approvals of building plans have been place on record till date. if this averment of respondent is considered it would mean that respondent has

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been raising payment demands since 2013 for different stages of construction without even getting the building plan sanctioned/ approved from the concerned Department which cannot be the case. Only stating that building plan got approved in year 2024 will not bar the right of allottee to have possession of their booked unit within reasonable period of time. Authority is of the view that since agreement was signed in year 2013 and clause 5.1 also mandates respondent to get approval of sanctioning of building plans within a reasonable period of time which nowhere can be accepted as year 2024. It seems that respondent had intentionally put this vague clause which is 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 unit and to deprive the allottee of his right accruing after delay in delivery possession. Although in present case, clause 5.1 of agreement provides for handing over of possession within 24 months from execution of builder buyer agreement which comes to **17.04.2015**.

21. **Finding w.r.t grace period:** The promoter had agreed to handover the possession of the within 24 months from the date of execution of floor buyer agreement or sanctioning of building plans, whichever is later. 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 unit in question. Since;



the later clause of approval sanctioning of building plan is vague, ambiguous and arbitrary, 24 months from the date of execution of floor buyer agreement is taken as the date for calculating the deemed date of possession i.e. 17.04.2015. 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 24 months. Thus, the period of 24 months expired on 17.04.2015. 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.

22. In view of above observations given in preceding paragraphs of this order, Authority summarizes its observations in the matter as under:
- i. Subsequent and last builder buyer agreement that finally crystalized the terms of agreement was executed between both the parties on 17.04.2013. As per clause 5.1 of the agreement and the observations as recorded in para 20 of this order, possession of the unit should have been delivered by 17.04.2015. It is an admitted fact that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement and delivery of possession of the unit has also been delayed by the respondent by more than 9 years. Even after a lapse of 9 years, respondent is not in a position to offer possession of the unit to complainants since respondent



company has yet to apply for occupation certificate in respect of the unit booked. Fact remains that respondent is not in position to handover immediately possession of the booked unit. Complainants, however, does not wish to withdraw from the project and is rather interested in getting the possession of their unit. Learned counsel for the complainants has clearly stated that complainant is ready to wait for possession of unit after completion of construction and receipt of occupation certificate. In such 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. Respondent in this case has not made any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e., 17.04.2015 up to the date on which a valid offer is sent to him after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-



(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: *“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%:*

Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”..”

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., 10.09.2024 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.

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 11.1% (9.1% + 2.00%) from the due date of possession i.e. 17.04.2015 till the date of a valid offer of possession.

Authority has got calculated the interest on total paid amount from due date of possession i.e. 17.04.2015 till the date of this order i.e. 10.09.2024 which works out to ₹ 29,10,024/- and further monthly of ₹ 26,147/- 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 10.09.2024 (in ₹)
1.	25,41,896/-	17.04.2015 (Due date of possession)	₹ 26,55,306/-
2.	3,24,018/-	14.08.2017 (Due date of possession or date of payment whichever is later)	₹ 2,54,718/-
3.	Total payment- 28,65,914/-		₹ 29,10,024/-



Monthly interest:	₹ 26,147/-		
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ii. Further, ld. counsel for complainants referred to page no.30 of complaint book and stated that relief no.3 related to illegal demands raised by respondent on different accounts be set aside. In this regard, It is observed that the complainants had opted for a construction linked plan and had paid more than basic sale price in year 2009-2017 itself. Since the delay caused is attributed to the respondent, it cannot burden the complainants with the charges/taxes etc. which were not applicable at the time of deemed date of possession, which in present case was 17.04.2015. Further, para 24(v) of this order clarifies that respondent will not charge anything from the complainants which is not part of the agreement to sell. Further, the payments on account of club membership charges shall be raised/demanded only at the time of offer of possession and offer of possession shall be as per the terms of agreement and in consonance with the provisions of the RERA Act,2016, Rules and regulations and principles laid down by the Authority through its judgments in complaint no. 113/2018-Madhu Sareen vs BPTP Ltd dated 16.07.2018.

iii. In present complaint, complainants have also prayed for certain reliefs vide clause 4,5,7,8 mentioned ta page no. 30 and 31 of complainant. With respect to said relief's stated in clause 4 and 5, same



stands allowed by the Authority vide order dated 22.11.2023. Rest of relief clause 7 and 8 were neither argued by the counsel for complainant nor complainant has submitted any documents stating issues with respect to the same.

23. Lastly, relief clause 6 at page no. 30 of complaint book states that complainants are seeking compensation to the tune of ₹. 50,00,000/- on account of grievance and frustration caused to complainants along with litigation cost of Rs. 1,50,000/-. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.



F. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent no.1 shall make legally valid offer of possession to the complainants after obtaining occupation certificate from the competent Authority. Further respondent is directed to execute conveyance deed within 90 days after handing over of valid legal possession to complainants.

(ii) Respondent is directed to pay upfront delay interest of ₹ 29,10,024/- (till date of order i.e 10.09.2024) 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 @ ₹ 26,147/- till the offer of possession after receipt of occupation certificate.

(iii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them as per builder buyer agreement.

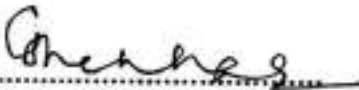
(iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate



i.e, 11.1% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

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


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CHANDER SHEKHAR
[MEMBER]


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