HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**766 of 2021**
Date of filing:	**22.07.2021**
First date of hearing:	**29.09.2021**
Date of decision:	**02.09.2024**

Mr. Rajiv Kumar Chauhan,
S/o Shri B.S. Chauhan,
R/o Flat no. S-1, Plot No.- 54-55,
Pocket-1, Sector-7, Vaishali Extn.,
Ramprastha Greens,
Ghaziabad, UP- 201010 ....COMPLAINANT(S)

VERSUS

1. M/s BPTP Limited
   Registered office-
   M-11, Middle Circle, Connaught Circus,
   New Delhi- 110001

2. M/s Countrywide Promoters Pvt. Ltd.
   Registered office- OT-14, 3rd Floor,
   Next Door Parklands, Sector-76,
   VPO Baroli,
   Faridabad, Haryana-121004 ....RESPONDENTS

CORAM: Nadim Akhtar **Member**

Chander Shekhar **Member**

Present: - Sh. Shobhit Phutela, Counsel for the complainant through VC

Sh. Hemant Saini, Counsel for both the respondents.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 22.07.2021 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park-81, Parklands, Sector-81, Faridabad
2.	Nature of the project.	Residential independent floors
4.	RERA Registered/not registered	Not Registered

5.	Details of allotted unit.	Unit No.- C1.2-04-GF measuring 1478 sq.ft.
6.	Allotment Letter-	16.03.2010
7.	Date of agreement-	30.12.2010
8.	Deemed date of possession	30.12.2012 (24 months from the date of execution of agreement)
9.	Possession clause	*"5. Possession: 5.1 Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and 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 the 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 Maintenance Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchasers) for fit outs within a period of 24 months from the date of execution of Floor Buyer's Agreement.... The*

		Seller/Confirming Party shall be entitled to a grace period 180 (One Hundred and Eighty) days after the expiry of 24 months as stated above, for applying and obtaining the occupation certificate from the competent authority."
10.	Offer of possession	26.10.2020 (without OC)
11.	Payment plan	Construction linked plan
12.	Transfer of unit by Mrs. Sneh Chauhan to Mr. Rajiv Chauhan	Year 2015

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. Facts of complaint are that the complainant in the year 2009, booked an Independent Floor, admeasuring the Super Area of 1481 Sq. Ft. in the Project namely; ""PARK-81, Parklands"' at Sector 81, Faridabad, Haryana" in the name of his wife, namely, Ms. Sneh Chauhan.

4. That the Respondent No. 1, vide its letter dated 16.03.2010, allotted Unit No. CL2-04-GF, in the name of Mr. and Mrs. Sneh Chauhan, by way of 'Draw of lots' and demanded a sum of ₹ 4,17,403/- in the name of Basic Sale Price and EDC/IDC and threatened to impose an interest of 18% p.a., in case any delay

is caused in making the payment. A copy of Allotment letter dated 16.03.2010 is annexed as Annexure C-1.

5. That on 30.12.2010, the Respondents executed the Floor Buyer's Agreement with the wife of the Complainant. As per clause 5.1 of the said Agreement, respondents were obligated to handover legal physical possession of the floor/unit on or before 24 months from date of execution of Flat Buyer's Agreement. A copy of the Floor Buyer's Agreement dated 30.12.2010 is annexed as Annexure C-2.

6. That the payment plan opted by the complainant is the 'Construction Linked Plan'. That the complainant have already made the payment of ₹37,10,396/- out of total sale consideration of ₹36,15,745/- till date.

7. That complainant made timely payments to the respondents as per demands raised by him according to the construction linked plan. As a proof of payment a copy of Statement of Account issued by the Respondent No. 1 on 13.04.2021 is annexed as Annexure C-3.

8. That in 2015, the said unit was transferred by Mrs. Sneh Chauhan (wife of the complainant) in the name of her husband, Mr. Rajiv Chauhan, the complainant herein, and the same was duly acknowledged by the respondents. Accordingly, all the rights and liabilities pertaining to the said Floor/ Unit were duly endorsed in the name of the complainant in the records of the respondent company. That since 2011, complainant has been regularly trying

to communicate with the respondent no.1 regarding the update on status of the booked unit of the complainant. However, respondent No. 1 has not bothered to apprise the complainant about the status of his unit and has failed to pay any heed to the visits or communications of the complainant.

9. That as and when the respondent no. 1 raised demand towards the floor/unit, the complainant requested to adjust the delay compensation, however, the respondent No. 1 failed to do so and cited unacceptable excuses and reasons. Copies of emails are annexed as Annexure C-4.

10. That after lapse of more than 7 years, respondent sent a letter of offer of possession on 26.10.2020 to the complainant. Along with the said letter, the respondent had also sent a demand letter and to the utmost shock of the complainant, the respondent had demanded a huge sum of ₹8,32,443/- on various pretext, which is unjust, arbitrary and illegal. A copy of letter dated 26.10.2020 is annexed as Annexure C-5.

11. That the respondent has raised several illegal demands towards the unit of the Respondent Company, such as-

S.NO	Demand Particulars	Amount (Rs.)
1.	Enhanced External Development Charges	1,30,391
2.	Cost Escalation Charges @ 99.30 per sq. ft.	1,53,319
3.	Electrification and STP Charges	90,393

4.	Club Membership Charges	50,000

12. Further, on receiving the said letter dated 26.10.2020, the complainant wrote an email dated 27.10.2020 to respondent to explain the above charges levied which were uncalled for and that the delay compensation has also not been adjusted. However, no response was received from respondent. Therefore, complainant personally visited the office of the respondent and asked for a justification against the unreasonable demands. However, officials of the respondent failed to provide any explanation for the illegal demands, also refused to credit the promised compensation which was due from year June 2013 (Deemed date of possession) till October 2020 (when the possession was offered). A copy of email dated 27.10.2020 is annexed as Annexure C-6. Thereafter, complainant was forced to send a legal notice to the respondent on 01.02.2020. A copy of Legal Notice dated 01.02.2020 sent to the respondents is annexed as "Annexure C-7".

13. That the complainant herein is aggrieved by the afore said demands raised by the respondent and despite several requests, the respondent has failed to provide any justification for the same.

14. To support his pleadings, the complainant filed a rejoinder dated 09.03.2022. Additionally, the complainant submitted an application dated 10.03.2022 to place on record the receipts issued by the respondent company as proof of the

payments made to the respondent. Another application was filed on 20.01.2023 by the complainant requesting to advance the date of hearing to an earlier date. Lastly, an application dated 22.07.2024 was submitted by the complainant, outlining the brief facts of the case and detailing the illegal demands made by the respondent.

C. RELIEF SOUGHT

15. That the complainant seeks following relief and directions to the respondents:-

i. Pass an appropriate order directing the Respondents to handover physical possession to the Complainant at the earliest after completing the unit booked by the Complainant and without imposing such arbitrary charges;

ii. Pass an appropriate order directing the Respondents to waive off Enhanced External Development Charges, Cost Escalation Charges @ 99.30 per sq. ft., Club Membership Charges and Electrification and STP Charges imposed by the Respondent No. 1 Company as being unjust, arbitrary and illegal;

iii. Pass an appropriate order directing the Respondent Company to pay interest to the Complainant on the amount paid by the Complainant on account of delayed possession as per the provisions of RERA Act, 2016 (MCLR + 2%);

iv. In exercise of the powers conferred under section 35 of the Act, direct the Respondents to place on record all statutory approvals and sanctions pertaining to the project; and

v. Pass any other order or direction as this Ld. Authority may deem fit and proper by exercising the judicial powers vested with the Ld. Authority under relevant provisions of the Real Estate (Regulation and Development) Act, 2016.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents submitted a detailed reply on 30.11.2021 in the Court pleading therein:

16. Complainant along with his wife approached the respondent for the booking of the residential unit in the respondent Project "Park 81", situated at sector 81, Faridabad, Haryana. Complainant after agreeing to all the terms and of the Application for Allotment (herein referred as "Booking Form") along with the indicative terms and condition duly signed and paid the booking amount towards booking of the unit of the Project. A copy of the Booking Form dated 24.09.2009 is annexed as Annexure-R/1. Respondent offered the complainant a discount of ₹1,30,000/- to the complainant.

17. As per the payments plan complainant made following payments:

Sr. no.	*Respondent raised demand at which stage*	*Demand letter raised by the respondent and the same is annexed at-*	*Payment was to be paid on or before*
1.	"90 days of booking"	Demand letter dated 24.12.2009- Annexure-R/2.	on or before 08.01.2010 (payment made)
2.	"150 Days Of Booking"	Demand letter dated 16.03.2010 - Annexure-R/3.	on or before 31.03.2010 (payment made)
3.	"Start of construction"	Demand letter dated 01.11.2010 - Annexure-R/4.	on or before 16.11.2010 (payment made)
4.	"Start Of Ground Floor"	Demand letter dated 22.07.2011 - Annexure-R/6.	on or before 26.08.2011 (payment made)
5.	"Casting of First Floor"	Demand letter dated 11.08.2011 - Annexure-R/7.	on or before 06.08.2011 (payment made)
6.	"Casting of second Floor"	Demand letter dated 07.11.2011 - Annexure-R/8.	on or before 22.11.2011. (payment made)
7.	"Start of brickwork"	Demand letter dated 12.11.2011 - Annexure-R/9.	on or before 27.12.2011 (payment made)
8.	"Start of Flooring"	Demand letter dated 18.12.2018 - Annexure-R/13.	on or before 02.01.2019. (payment made)

18. That the complainant as well as the respondent entered into the Flat buyer Agreement dated 30.12.2010. A copy of the Flat Buyer Agreement is annexed

as Annexure-R/5. Complainant approached the Respondent for the substitution of the name of the complainant with the name of the Complainant. A copy of the name substitution letter dated 02.11.2015 is annexed as Annexure-R/10.

19. Respondent duly issued the demand of VAT on 10.11.2016 which was to be paid on or before 25.11.2016. A copy of the billing of VAT letter dated 10.11.2016 is annexed as Annexure-R/11.

20. Respondent being the customer centric company duly updated the Complainant about the status of the unit via emails. Copies of the emails are annexed herewith as Annexure-R/12,14. Respondent after completing contractual formalities offered the possession to the complainant vide letter dated 26.10.2020. A copy of the Offer of Possession dated 26.10.2020 is attached as Annexure-R/15.

21. Respondent challenges the maintainability of the complaint on following grounds:

    a. That the complaint liable to be dismissed as the unit in question is an independent Floor having an area tentatively admeasuring 143.44 sq. mtr. As per section 3(2)(a) of Real Estate (Regulation and Development) Act, 2016, registration is not required for an area proposed to be developed that does not exceed 500 sq. meters. Furthermore, as per the Guidelines for Registration of Independent

Floors for the Residential Plots of Licenced Colonies issued by Financial Commissioner & Principal Secretary to Govt. Haryana Town & Country Planning Department vide Memo. No. 2733-34 dated 27.3.2009, registration of independent floors shall be allowed in case of residential plots of sizes 180 sq. yards or above and each such dwelling unit shall be designated as 'Independent Floor' which shall be recognized as a distinct, identifiable property with a separate identification number.

b. The RERA Act or the Rules nowhere declares the terms and conditions of the existing Agreement (executed prior to the effective date of the Act, or Rules) null or void. Therefore the terms of the Agreement are well enforceable.

c. The complainant is a defaulter/offender under section 19 (6), and 19 (7) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the Complainant cannot seek any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules framed thereunder.

d. That the Complaint under reply is also liable to be dismissed for concealment of material facts and documents from this Hon'ble Authority. It is further submitted that the Complainant is a defaulter as complainant defaulted in making payment of the demand called vide

demand letters dated 26.10.2020. Therefore the Respondent issued the reminder letters dated 11.01.2021, 15.03.2021 and 17.07.2021. Complainant has also concealed that she has approached though a broker "Joshi Retalors' after due diligence and research.

e. That the complainant vide clause 6 of the booking duly agreed to make payments of the statutory dues. Further, the complainant while booking floor duly agreed that the possession timeline was dependent upon the force majeure clause and timely payment of each installments.

f. That the Complainant was well aware of the fact that Complainant has paid the amount of cost escalation as per the duly agreed clauses under booking form.

g. That the delay was due to reasons beyond the control of the Respondent, as the Respondent had accepted the booking of the unit in question based on the Self-Certification policy issued by DCP, Haryana (the statutory body for approval of real estate projects). The Respondent in accordance with the policy and other prevailing laws submitted detailed drawings and designs plans for relevant buildings along with requisite charges and fees. In terms of the said Policy, person could construct building in licensed colony by applying for approval of building plans to the Director or officers of the

department delegated with the powers for approval of building plans and in case of non-receipt of any objection within the stipulated time, the construction could be started. The Respondent applied for approval of building plans and initiated development/ construction work. The building plans were withheld by the DCP, Haryana despite the fact that these building plans were well within the ambit of building norms and policies. Copy of Self Certification Scheme is annexed as Annexure-R/16. Although, no objection was received from the Department, however, to ensure that there are no problems later, the Respondent again applied for approval of building plans under another regular scheme for sanctioning too. That while in few cases, approval under the regular scheme was received from the Department, but neither approval nor non approval of the Department was received against the Application under Self Certification Scheme. Thus, the Respondent continued the Internal Development Works and simultaneously raised the construction on the plots which was in consonance with the prevailing Building Bylaws considering plans are deemed approved.

h. That since there was no clarity in the policy of self-certification to the effect whether the same is applicable to individual plot owners only and excludes the developers/ colonizers or whether the same is

applicable to the developers/ colonizers as well. The Department vide public notice dated 08.01.2014 granted 90 days to submit requests for regularization of construction and the Respondent again submitted the building plans for approval under the said notice. The copy of Public Notice dated 08.01.2014 is enclosed herewith as Annexure-R/17.

i. That due to ambiguities in the various policies, the construction of the project was delayed again. The Respondent has, at all times, with the view to complete construction in time bound manner and in terms of license, raised and followed up with the Department highlighting the said issues. That the Department vide its order dated 08.07.2015 finally clarified that self-certification policy shall also apply to cases of approval of building plans submitted by colonizer/developer but did not formally released all the plan submitted by the respondent from time to time in various building plan approval schemes. The copy of order dated 08.07.2015 is annexed as Annexure- R/18.

j. That the Complainant agreed in the Booking Form that subject to force majeure and the Complainant complying with all the terms and conditions of the FBA, the Respondent proposed to handover possession of the unit in question within a period of 24 months from the issuance of the sanction plan of project with a grace period of 180 days after the expiry of 24 months.

k. The relevant clauses of the booking form are reproduced below-clause:

> *"Clause 34- Force Majeure:*
> *The Applicant(s) agrees that in case the Company is unable to deliver the said Residential Floor to the Applicant(s) for his occupation and use due to (a) any legislation, order or rule or regulation made or issued by the Government or any other authority,*
> *(b) if any competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals for any reason whatsoever,*
> *(c) if any matters, issues relating to such approvals, permissions, notices, notifications by the Competent Authority(ies) become subject of any suit/writ before a Competent Court, (d) due to force majeure conditions, or (e) any other circumstances beyond the control of the Company or its officials, then the Company may cancel the allotment of the said Residential Floor in which case the Company shall only be liable to refund the amounts received from the Applicants) without any interest or compensation whatsoever."*

l. That it was voluntarily agreed between the complainant and the respondent and as per Clause 13 of booking that subject to timely payments by the allottee for his allotted unit along with the adherence to other terms of allotment under the Agreement, if the respondent fails to offer possession of the allotted unit within the stipulated time, then Respondent would be liable to pay compensation @ Rs.5/- (Rupees Five Only) per sq. ft. on the total super built up area of the said unit for each month(s) of delay until the possession is provided

while the said compensation was agreed to be paid at the time of execution of the Conveyance Deed.

m. That the changed norms for water usage, change in law pertaining to provision of additional fire stair case, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity crunch and non-funding of real estate projects and delay in payment of installments by customers etc. were the reasons for delay in construction and after that Government took long time in granting occupation certificate owing to its cumbersome process.

n. That the construction of the unit is completed and possession has already been offered to the complainant. That the Complainant rather than making the outstanding payment has now as an afterthought raised frivolous contentions by filing the present complaint.

22. Further, the respondent filed an application dated 07.07.2022 in compliance with the order dated 09.03.2022 passed by the Authority, wherein the respondent was directed to provide information pertaining to electrification charges, STP charges, and the enhancement of External Development Charges related to the unit in question. Additionally, two applications dated 11.10.2023 and 12.10.2023 were submitted by the respondent, explaining the break-up of the demands raised in the offer of possession dated 26.10.2020.

Lastly, the respondent filed an application dated 01.04.2024 to submit a power of attorney and a copy of the board resolution on behalf of the respondent.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

23. Ld. counsel for complainant reiterated the basic facts of the case and stated that respondent has made a considerable delay in handing over possession of the floor to the complainant. Further as per last order dated 05.08.2024 respondent sought some more time to explore the opportunity to settle the matter with the complainant, but no settlement has been arrived at between the parties. He further requested the Authority to decide the captioned complaint on merits.

24. On the other hand, ld. counsel for respondent stated that respondent tried to discuss terms and condition with the complainant for the purpose of settlement, wherein respondent was willing to waive of ₹2,54,784/-. However, complainant is not willing to accept the same. Therefore, there seems no scope for settlement as of now.

F. ISSUES FOR ADJUDICATION

25. Whether the complainants are entitled to possession of booked flat along with delay interest in terms of Section 18 of Act of 2016?

26. Whether Enhanced External Development Charges, Cost Escalation Charges @ 99.30 per sq. ft., Club Membership Charges and Electrification and STP Charges imposed by the Respondent No. 1 Company be waived off as being unjust, arbitrary and illegal?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

27. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a floor in the real estate project; "Park-81, Parklands, Sector 81, Faridabad, Haryana" being developed by the promoter namely; "M/s BPTP Ltd" in the year 2009. Thereafter, complainant issued an allotment letter dated 16.03.2010 vide which complainant was allotted Unit no. CL2-04-GF, by way of 'draw of lots' admeasuring 1478 sq. ft. Floor buyer agreement was executed between the parties on 30.12.2010. Complainant has paid a total amount of ₹37,10,396/- out of total sale consideration of ₹36,15,745/-

28. **Findings on the objections raised by the respondents.**

a. 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 floor-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 floor buyer agreement dated 30.12.2010 is admitted by the respondents. Said floor buyer agreement was binding upon both the parties. As such, the respondents are under an obligation to hand over possession on the deemed date of possession and in case, the respondents 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.

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

The obligation to deliver possession within the period stipulated in the Floor Buyer Agreement, i.e., 24 months from the date of execution of builder buyer agreement is not fulfilled by respondents till date. There is delay on the part of the respondents and the various reasons given by the respondents such as delay in issuance of clarification of self certification policy by the Department of Town and Country Planning, changed norms for water usage, change in law pertaining to additional fire stair case, not permitting construction after sunset, etc.. are not convincing enough as the due date of possession was in the year 2013 as per the agreement. DTCP order referred by the respondents pertains to year 2015; therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

c. Objections raised by the respondents regarding as the unit in question is an independent floor having area tentatively admeasuring 143.44 sq. mtr. As per section 3(2)(a) of Real Estate (Regulation and

Development) Act, 2016 registration is not required for an area proposed to be developed that does not exceed 500 sq. meters.

Regarding the argument of the respondents that this Authority does not have the jurisdiction to deal with the complaint relating to plots which are below 500 Sq. yds.., it is observed that the respondents are developing a larger colony over several acres of land. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. The argument of the respondents is that since the plot does not exceed 500 Sq. yds. therefore, the Authority has no jurisdiction is totally untenable and unacceptable. Promoters are developers of a large project and this plot is one part of the large number of plots. Jurisdiction of the Authority extends to the entire project and each plot of the said project.

d. Objections raised by respondents that complainant is a defaulter/offender under section 19 (6), and 19 (7) of the Real Estate (Regulation and Development) Act, 2016. Therefore, the Complainant cannot seek any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules framed thereunder.

With regard to this objection raised by the respondents, Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 are reproduced below:

> 19(6)*"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the*

manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

As per section 19 (7) of the Real Estate (Regulation and Development) Act, 2016-

"The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

The complainant opted for a Construction Linked Payment Plan (CLP) and made payments as per the demands raised by the respondents during each construction stage. The respondents admitted that the complainant made payments according to the construction progress. Additionally, the complainant paid a total amount of ₹37,10,396/-, exceeding the apartment's total value of ₹36,15,745/-, indicating that the complainant has already overpaid.

The respondent objection, claiming that the complainant is a defaulter under Sections 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 (RERA), and therefore cannot seek relief under RERA, lacks merit. Sections 19(6) and 19(7) impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. However, since the complainant has made

all payments, including overpayment, there is no default on the complainant's part. Therefore, the respondents claim that the complainant is not entitled to relief under RERA is unsustainable. Moreover, the respondent failed to obtain the occupancy certificate, which is necessary for handing over possession, despite the deemed possession date being 30.12.2012. This delay in securing the occupancy certificate indicates that the project is either incomplete or does not meet the required legal standards. Under RERA, the promoter is responsible for completing the project on time and obtaining all necessary approvals. Failure to meet these obligations allows the buyer to seek relief under RERA, such as compensation for delays or even refund with interest.

Authority concludes that, the respondents objection under Sections 19(6) and 19(7) of RERA is invalid, as the complainant has fulfilled payment obligations. On the other hand, the respondent's failure to obtain an occupancy certificate and deliver possession by the agreed date places them in breach of RERA. The complainant is, therefore, entitled to seek relief under RERA provisions.

e. Counsel for respondents have also stated that respondent has duly offered the discount of ₹1,30,000/- to the complainant at the time of booking as a discount on basic sale price as a good will gesture. However, the said fact has been concealed by the complainant. In this regard, Authority deems

appropriate to not allow refund of the above said amount to the respondent for two fold reasons. Firstly, complainant is not interested in withdrawing from the project and is willing to continue and wait till project gets completed, meaning thereby, complainant is sticking to their decision and showing his willingness to have the booked unit for which he had already paid more than the basic sale price to the respondent in the year 2013 itself. Secondly, since, complainant has performed his part and is taking his unit for which he had paid in advance to respondents for which certain benefits were credited by respondents to complainant. Now, respondents cannot be allowed to take those amounts back since complainant had completed his part of the agreement, however respondents have miserably failed to abide by terms of agreement

f. 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. 30.12.2012 derived from agreement dated 30.12.2010.

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 5.1 of FBA of agreement dated 30.12.2010 provides for handing over of possession and is reproduced below:-

"Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and 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 all instalments and the 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 Maintenance Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchasers) for fit outs within a period of 24 months from the date of execution of Floor Buyer's Agreement, the Seller/Confirming Party shall be entitled to a grace period 180 (One Hundred and Eighty) days after the expiry of 24 months as stated above, for applying and obtaining the occupation certificate from the competent authority."

Clause 5.1 of the Floor buyer agreement dated 30.12.2010, provides for handing over of possession within 24 months from execution of builder buyer agreement which comes to **30.12.2012**.

g. **Finding w.r.t grace period**: The promoters had agreed to handover the possession of floor within 24 months from the date of execution of floor buyer agreement. 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. 30.12.2012. 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 30.12.2012. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

29. In view of above observations given in preceding paragraphs of this order, Authority summarizes its observations in the matter as under:

i. Floor buyer agreement that finally crystalized the terms of agreement was executed between both the parties on 30.12.2010. As per clause 5.1 of the agreement and the observations as recorded in para f(ii) of this order, possession of the unit should have been delivered by 30.12.2012. 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 8 years. Even after a lapse of 8 years, respondents are not in a position to offer possession of the unit to complainants since respondent company has yet to receive for occupation certificate in respect of the unit booked. Respondents have only applied for the grant of occupation certificate on 02.11.2020. Fact remains that respondents are not in position to handover immediately possession of the booked unit. Complainant, however, does not wish to withdraw from the project and is rather interested in getting the possession of their unit. Learned counsel for the complainant 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.

Respondents in this case have made an offer of possession to the complainant on 26.10.2020 without accompanied by occupation certificate, thus making it an invalid offer of possession. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e., 30.12.2012 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., 02.09.2024 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.30.12.2012 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., 30.12.2012 till the date of this order i.e. 02.09.2024 which works out to ₹42,28,238/- and further monthly of ₹29,742/- as per detail given in the table below:

Sr. No.	**Principal Amount**	**Deemed date of possession or date of payment whichever is later**	**Interest Accrued till 02.09.2024**
1.	₹32,57,822.48/-	30.12.2012(Deemed date of possession)	₹42,25,485/-
2.	₹2,152/-	27.02.2013(date of payment)	₹2753/-
	Total- ₹32,59,974.48/-		Total- ₹42,28,238/-
Monthly interest:			₹29,742/-
Note- Complainant has submitted an application dated 10.03.2022 to place on record the receipts issued by the respondent company as a proof of payments made to the respondent. As per said application, complainant has annexed total receipts amounting to ₹42,28,238/- proving the payments by him against the unit in question.			

ii. Further, ld. counsel for complainant stated that relief no.2 is related to illegal demands raised by respondent on different accounts be set aside. In this regard, it is observed that the complainant had opted for a construction linked plan and had paid more than basic sale price in year 2013 itself. Since the delay caused is attributed to the respondents, it cannot burden the

complainant with the charges/taxes etc. which were not applicable at the time of deemed date of possession, which in present case was 30.12.2012. It is pertinent to mention that respondents sent a letter of offer of possession to the complainant on 26.10.2010 vide which respondent raised demand with regard to the enhanced External Development Charges, cost escalation charges @99.30 per sq. ft., club membership charges and electrification and STP charges.

a. Firstly, with regard to the **Enhanced External Development Charges**, Authority is of the view that respondents have not received occupancy certificate for the project in question till date. Therefore, in general circumstances, respondents cannot legally charge Enhanced External Development Charges (EDC) without obtaining the occupancy certificate (OC), as doing so would be a breach of their obligations under the Real Estate (Regulation and Development) Act, 2016 (RERA). External Development Charges (EDC) are levied by the local authorities for infrastructure development such as roads, sewage, and water supply. The EEDC typically arises when there are revisions in development costs imposed by the local authorities. However, the respondents cannot demand such enhanced charges unless the project is complete and the OC has been obtained. Section 11(4)(b) of RERA mandates that the promoter (respondent) is responsible for obtaining the completion and occupancy

certificates. Without fulfilling this key obligation, the respondents cannot place additional financial demands on the complainant, including enhanced EDC. Furthermore, the judgment of the **Delhi High Court in 2013. "Supertech Ltd. v. Emerald Court Owner Resident Welfare Association"**, reinforced that developers must obtain necessary approvals, such as the Occupancy Certificate (OC), before imposing further charges or handing over possession. Without an OC, the project is considered incomplete, and buyers cannot be charged additional amounts, including Enhanced EDC. Therefore, this judgment makes it clear that after the year 2013, any demand raised by the respondent on account of enhanced external development charges without obtaining occupancy certificate for the project in question would be considered illegal and unjustified.

b. Secondly, with regard to the **cost escalation charges**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 26.12.2012. The respondents issued a letter offering possession on 26.10.2020, despite the deemed date of possession being in 2012, resulting in an 8-year delay. Additionally, the offer was made without obtaining the required Occupancy Certificate (OC), making it legally invalid. The respondents also imposed cost escalation charges, which is unjust since the delay in offering possession, and any cost

increase, was due to the respondent's failure to complete the project on time. Cost escalation charges are typically justified when there are unforeseen increases in construction costs, but in this case, the delay was solely caused by the respondents, making it unfair to pass the burden of escalated costs onto the complainant. Without the OC, the project is incomplete, and the offer of possession cannot be legally valid. The complainant, having already endured an 8-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondents. Courts have consistently ruled that developers cannot impose additional financial burdens on homebuyers for delays caused by the developers themselves. Therefore, demand raised by the respondents on account of cost escalation charges shall be set aside.

c. Thirdly, with regard to the demand raised by the respondent on account of **club charges**, Authority observes that club charges can only be levied when the club facility is physically located within the project and is fully operational. In this case, it is essential to note that the Occupancy Certificate (OC) for the project has not yet been obtained by the respondent. Without the OC, the project cannot be deemed complete, and thus, the claim for charging club fees lacks a legal basis. The offer of possession made to the complainant on 26.10.2020 is invalid due to the absence of the OC, which further undermines any claims to charge for

amenities not yet available. The complainant has explicitly stated in his application dated 22.07.2024 that the proposed club has not come into existence, with only a temporary club operational, if at all. This situation makes it clear that the promised club facility is nonexistent at this stage, and the demand for club charges is wholly unjustified. Since the club is not present in the project in question and the demand for club charges is being made without any substantiated basis, the demand raised by the respondent on account of club charges is also set aside.

d. Fourthly, with regard to the demand raised by the respondents on account of **Electrification charges and STP charges,** Authority is of the view that as per clause 2(h) of the agreement, "*Electricity connection charges shall be payable towards providing electricity connection and meter and the charge shall be communicated at the time of handing over of possession* This clause explicitly indicates that the respondent is obligated to charge for electricity connection only at the time when a legally valid offer of possession is made to the complainant. However, in captioned complaint, the respondents have failed to hand over legally valid possession to the complainant up to this date. Since the legally valid offer of possession has not been executed, as per the terms of the agreement, the respondents cannot demand the electricity charges at this time. Therefore, until possession is duly handed over, the complainant

should not be liable to pay for these charges. Once possession is handed over in accordance with the agreement, the respondents will then be entitled to collect the electricity charges from the complainant, as specified. Until that point, the demand for electrification and STP charges remains invalid and unenforceable. On the other hand, as per clause 2(i) "*purchaser has undertaken and agreed to pay cost of construction/ erection of sewerage Treatment Plant/ Effluent Treatment Plant/ Pollution control devices.* While the clause indicates that the complainant has undertaken to pay the costs associated with the construction or erection of the STP, it does not explicitly state that the charges must be levied immediately or at any specific point in time. Therefore, as per the terms of the agreement, the complainant is indeed liable to pay the STP charges, provided that the facility has been constructed and is operational.

30. Lastly, Authority concludes that currently, all charges imposed by the respondent, including **Enhanced External Development Charges (EDC)**, **cost escalation charges**, **club charges**, and **electricity connection charges**, are invalid due to the absence of an **Occupancy Certificate (OC)**. However, once the respondent obtains the OC and issues a legally valid offer of possession to the complainant, the complainant will be liable to pay all charges as outlined in the **Floor Buyer Agreement**. This liability will arise

only after the complainant receives a legally valid possession offer, ensuring that payment obligations regarding these charges are tied to the completion of the project and the availability of associated services. Until that time, any demand for payment of such charges remains unjustified and invalid.

31. Lastly, the Authority has reviewed all the applications filed by both parties, as outlined in paragraphs 14 and 22 of the order, to ensure a proper adjudication of the case.

F. DIRECTIONS OF THE AUTHORITY

32. 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 complainant after obtaining occupation certificate from the competent Authority. Further respondents are directed to execute conveyance deed within 90 days after handing over of valid legal possession to complainants.

(ii) Respondents are directed to pay upfront delay interest of ₹ **42,28,238/-** (till date of order i.e, 02.09.2024) 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 @ ₹29,742/- till the offer of possession after receipt of occupation certificate.

(iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time legally valid possession is offered to him as per floor 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 respondents shall not charge anything from the complainant which is not part of the agreement to sell.

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

CHANDER SHEKHAR
[MEMBER]

NADIM AKHTAR
[MEMBER]