



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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| Complaint no.: | 2372 of 2022 |
| Date of filing.: | 12.09.2022 |
| First date of hearing.: | 08.02.2023 |
| Date of decision.: | 26.09.2024 |

1. Rajesh Sharma, S/o Sh. Satpal Sharma
2. Poonam Sharma, W/o Sh. Rajesh Sharma
Both R/o, House No.411, Gali no. 8, Near Heera Mandir
New Baselwa Colony, Old Faridabad, Kheri Kalan
Haryana-121002.

....COMPLAINANT(S)

VERSUS

1. M/s BPTP Limited
Through its Managing Director
Having its registered office at:
28 ECE HOUSE, 1st floor, KG Marg, New Delhi, 110001.
Also at- OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad-
121004, Haryana
2. M/s Countrywide Promoters Private Limited Through its Managing
Director Having its registered office at: M-11, Middle Circle, Connaught
Circus, New Delhi 110001

....RESPONDENT(S)

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|-------------------------|--------------|
| Complaint no.: | 2210 of 2022 |
| Date of filing.: | 12.09.2022 |
| First date of hearing.: | 08.02.2023 |
| Date of decision.: | 26.09.2024 |

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Monika Negi W/o Sh. Tarun Negi
R/o, A-42, Sector-27, Noida
Uttar Pradesh-201301

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Circus New Delhi 110001

....RESPONDENT(S)

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

Present: - Sh. Arjun Kundra, Counsel for the complainants in both
cases
Sh. Hemant Saini, Counsel for both the respondents in both
cases.

ORDER:

1. Captioned complaints are taken up together for hearing as they involve
similar issues and are pertaining to same project-'Park Elite Floors'. This
final order is being passed by taking complaint no. 2372/2022 titled as

“Rajesh Sharma & Poonam Sharma vs BPTP Ltd & Anr.” as the lead case.

2. Present complaint has been filed on 12.09.2022 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:

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

| S.No. | Particulars | Details |
|-------|--|---|
| 1. | Name of the project. | Park Elite Floors, Faridabad. |
| 2. | Nature of the project. | Residential |
| 3. | RERA Registered/not registered | Not Registered |
| 4. | Details of unit. | H-4-21-SF , 2 nd floor, admeasuring 1157 Sq. Ft. |
| 5. | Date of Allotment letter in favor of original allottee | 24.12.2009 |

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|----|---|--|
| 6. | Date of nomination in favor of complainants | 27.05.2014 |
| 7. | Date of builder buyer agreement with complainants | 14.08.2014 |
| 8. | Due date of possession | 14.08.2017 |
| 9. | Possession clause in BBA (Clause 5.1 and 1.3) | <p>Clause 5.1</p> <p>The Seller/confirming party proposes to make offer possession of the unit to the purchaser within the commitment period alongwith grace period.</p> <p>Clause 1.3</p> <p>“Commitment Period” shall mean subject to force majeure circumstance, intervention of statutory authorities and purchaser having timely complied with all its obligations, formalities and or documentation as prescribed/ requested by Seller/ Confirming party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of all installments of the basic sale price and other charges as per the payment plan opted, the Seller/ Confirming party shall offer the possession of the unit to the purchaser as per the payment plan opted by the purchaser(s).</p> |



| | | |
|-----|--------------------------------|-----------------|
| 10. | Total/Basic sale consideration | ₹22,89,428.12/- |
| 11. | Amount paid by complainants | ₹24,61,521.34/- |
| 12. | Offer of possession. | 16.02.2024 |
| 13. | Date of occupation certificate | 15.12.2023 |

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

4. That the original allottee/purchaser namely Mr. Ramakant Sharma & Mrs. Bhavna Sharma applied for booking an apartment in respondent's project-'Park Elite Floors, Faridabad' by paying Rs 2,00,000/- on 06.06.2009. Thereafter, unit no. H-4-21-SF (hereinafter referred to as the said unit) was allotted to the original allottees vide allotment letter dated 24.12.2009.
5. That in the present case the complainants (**Subsequent Allottee**) derived their rights from the original allottees vide nomination letter dated 27.05.2014. A Builder Buyer Agreement (BBA) was executed between the complainants and respondent on 14.08.2014. As per terms of the agreement possession of the unit was to be delivered latest by 14.08.2017. However, respondent has not made any offer of possession till date. That the basic sale price of the unit was fixed at ₹21.75 lacs out of which



complainants had already paid an amount of ₹ 24,61,521.34/- for the booked unit from year 2009-2014. Copies of payment receipts and statement of account dated 07.08.2022 issued by respondent is annexed as Annexure C-5.

6. That the complainants have made all the payments on time, the respondents have miserably delayed the construction and development of the project. The respondents have time and again extended the probable date for the completion of the project misleading the complainants. The copies of the Demand/Payment request issued by the respondents have been annexed as Annexure C-6. Copies of the emails reflecting the unilateral change/extension in due date of possession have been annexed as Annexure C-7. The complainants on the other hand had already made the payment of the entire sale consideration and therefore had no other option than to place reliance on the words of the respondents. The possession of the residential floor has been due since August 2017 but till date the same has not been delivered and there is no sign of completion of the same in the near future. The respondent companies have committed gross deficiency in services and have indulged in unfair practices. The complainants further took a loan of Rs. 26,87,301/- from HDFC bank for the present unit. A copy of the Loan Agreement, Tripartite agreement is annexed as Annexure C-8. The Complainants have made the booking of



the residential floor for the personal residential needs and require immediate possession with the prescribed rate of interest.

7. That the complainants are aggrieved by the conduct of the respondents and inordinate delay in the completion and development of the project and have therefore approached this Authority. Hence the present complaint.

C. RELIEF SOUGHT

8. That the complainants seeks following reliefs and directions to the respondents: -

- i. Direct the Respondents to deliver Immediate Possession of the floor of the complainants i.e. H4-21-SF, BPTP Park Elite Floors, Parklands, Faridabad, Haryana admeasuring 1,157 sq ft. after due completion and receipt of Occupancy & Completion certificate(s) along with all the promised amenities and facilities and to the satisfaction of the complainant; and
- ii. Direct the respondents to pay prescribed rate of interest as per the Rera Act, on the amount already paid by the complainants from the promised date of delivery i.e. 14th August 2017 till the actual physical and legal delivery of possession; and



- iii. Pass an order restraining the respondents from charging any amount from the Complainants which do not form part of the Floor Buyer's Agreement dated 14th August 2014 and/or is illegal and arbitrary including but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant and further to set aside & quash one sided, unilateral, illegal, unfair, arbitrary contracts/ undertakings/agreements/ affidavits, etc;
- iv. May pass any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 05.12.2023 pleading therein;

9. That present complaint pertains to an independent floor bearing no. H4- 21 SF, on 2nd Floor admeasuring 1157 sq. ft super area in the real estate Project "Park Elite Floors" being developed by the Respondent No. 1. The Respondent No. 2 is a mere confirming party to the Agreement. Neither the Respondent No. 2 is a necessary party nor a proper party to the



present case and no relief has been claimed from the Respondent No. 2 and hence, its name should be deleted from the array of parties.

10. The complainants are subsequent buyers who purchased the Unit from the erstwhile buyers and prior to purchasing the Unit, waived the right to seek delay possession charges through their Undertaking dated 22.05.2014.
11. That unit was originally booked by Mr. Praveen Kumar through a booking form dated 26.05.2009 after which, Mr. Praveen entered into an Agreement to Sell with Rajwant Sharma and Bhavana Sharma. The tentative registration request of Mr. Praveen was thereafter, endorsed in favor of Rajwant Sharma and Bhavana Sharma. Subsequently, unit no. H4-21 SF admeasuring 1157 sq. ft. was allotted vide allotment letter dated 24.12.2009 to Rajwant Sharma and Bhavana Sharma on the basis of the tentative layout plan in the project known under the name and style of "Park Elite Floors" (hereinafter referred to as the "Project"). A copy of the booking form dated 26.05.2009 is annexed as Annexure R1. A copy of the Allotment Letter dated 24.12.2009 is annexed as Annexure R2. Thereafter, Rajwant Sharma and Bhavana Sharma further sold the Unit to the complainants and requested the respondents to endorse the Unit in favour of the complainants. Prior to the nomination of the complainants, the complainants on 22.05.2014 executed indemnity cum undertakings, indemnifying the Respondents. On the basis of the undertaking dated



22.05.2014, wherein the complainants waived their right, if any, to seek delay possession charges. A copy of the undertaking dated 22.05.2014 is annexed as Annexure R3.

12. A Floor Buyer's Agreement was executed between the Parties on 14.08.2014. As per the Clause 5.1 read with 1.3 and 1.11, the due date of possession had to be offered as per the payment plan opted by the purchasers, with an additional grace period of 180 days. That as per the payment plan, the stage of offer of possession is after the completion of flooring, however, the stage reached is "On completion of brickwork" and hence, the claim of the Complainant is pre-mature. That without prejudice to the contentions and rights of the Respondents, it is submitted that the Project was (is) gravely affected by a number of force majeure circumstances.
13. That the project "Park Elite Floors" has been marred with serious defaults and delays in the timely payment of instalments by the majority of customers. On the one hand, the respondent had to encourage additional incentives like Timely Payment Discounts while on the other hand, delays in payment caused major setbacks to the development works. Hence, the proposed timelines for possession stood diluted. Construction of the project in question has been further marred by the circumstances beyond the control of the Respondent such as ban on construction by the Hon'ble



Supreme Court of India in M.C. Mehta v. Union of India, ban on construction by the Principal Bench of NGT in Vardhaman Kaushik v. Union of India and ban by Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR. Further, the construction of the project has been marred by the present endemic, i.e., Covid-19, whereby, the Government of India imposed an initial country-wide lockdown on 24/04/2020 which was then partially lifted by the Government on 31/05/2020. Thereafter, the series of lockdowns have been faced by the citizens of India including the Complainant and Respondent herein. Otherwise, construction of the project was going on in full swing, however, the same got affected initially on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.

E. REJOINDER FILED BY COMPLAINANTS ON 18.04.2024 RAISING ADDITIONAL ISSUES

14. That respondent after receipt of occupation certificate dated 15.12.2023 had issued an offer of possession dated 16.02.2024. It is the submission of complainants that said offer of possession is illegal because it is not accompanied with delay interest on account of delay caused in offering the possession and is accompanied with illegal demands. Further, as per the FBA dated 14.08.2014, the super built up area of the present unit/floor was 107.488



sq. mtr., or 1157 sq ft. on plot measuring 209.030 sq. mtrs. The alleged Offer of Possession dated 16.02.2024 mentions the super built up area of the present unit/floor was 107.49 sq. mtr., or 1157 sq ft. on plot measuring 209.03 sq. mtrs. However, in the alleged OC dated 15.12.2023, the area of the unit is only 90.772 sq. mtr or 977 sq ft. on plot measuring 205.96 sq. mtrs. This clearly proves the alleged OC & offer of possession & statement of receivables & payables are illegal & against the settled principles of the RERA Act and need to applied/issued/revised afresh.

15. Few of the concerns in brief are as follows:-

- i. No provision for the compensation & delay interest, etc., to the complainant. The complainant is entitled to prescribed rate of interest as per the Act for the period of delay.
- ii. Unilateral increase in total sale price of the unit-from Rs. 25,87,301.22/- as per the Statement of Account dated 07.08.2022 (Pg. no. 66 of the complaint) and now illegally enhanced to Rs. 27,67,838.15/-.
- iii. Cost escalation- The reasons for the cost escalation- Rs. 53,725.08/- are solely due to the delay in the construction and development of the project and the complainant cannot be burdened with the same.
- iv. Club Charges- The same need to be waived off as the same is not functional till date. Club has not been even constructed till date. The



respondents cannot collect Rs. 50,000/- as charges for the services which are non-existent till date.

- v. That there is no occupation certificate and completion certificate attached. That further the alleged OC dated 15.12.2023 is for a smaller area of the floor/Unit.
- vi. Illegal undertaking/indemnity attached with the alleged offer of possession (Annexure C & Annexure D).
- vii. Interest charges of Rs. 1,593/- have been wrongly imposed on the complainant, when the respondents have themselves delayed the project.
- viii. GST has been wrongly imposed on the complainant.
- ix. That the complainant has already paid Rs. 24,61,521.24/- to the respondents till date (Pg. no 33 & 66 of the complaint). That however, in the alleged offer of possession dated 16.02.2024, the respondents have illegally & arbitrarily mentioned Rs.22,80,521.85/- as amount received only.
- x. Charging illegally and arbitrary for the plot area and super area of the present unit.

F. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS

16. L.d. counsel for complainants reiterated his submissions and pressed upon for relief of possession of booked unit alongwith delay interest. He further

had

stated that respondent be directed to charge only for the area against which the occupation certificate has been granted by the competent authority, i.e., 977 sq. ft. He referred to his rejoinder wherein he has raised objection to the offer of possession dated 16.02.2024 and requested to direct respondent not to charge illegal demands/taxes from complainants at the time of offer of physical possession of the floor.

17. Ld. counsel for respondent has tendered two cheques towards delay interest bearing no. 002608 dated 11.07.2024 for an amount of Rs 6,23,387/- and bearing no. 002609 dated 11.07.2024 for an amount of Rs 6,23,387/- issued in favor of complainants. Said cheques are handed over to the ld. counsel for complainants in the Court itself. The Authority specifically asked ld. counsel for respondent as how the said amount of delay interest has been calculated. Ld. counsel for respondent apprised that calculations have been done in accordance with the provisions of RERA Act,2016 and Rules/Regulations framed thereunder and have been got vetted from a Chartered Accountant. Ld. counsel for respondent also submitted that the calculations and certificate of the Chartered Accountants will be submitted to the Authority by the end of the day. However, no such details have been provided so far, compelling Authority to presume that the cheques of an arbitrary amount have been provided by the respondent to the complainant. Further, he argued that complainant nowhere in its pleadings as well as in relief sought has mentioned anything related to difference of area for which occupation certificate has been provided. He stated



that relief beyond pleadings/relief sought cannot be awarded to complainants. In support, he read all the issues to be decided alongwith relief sought at the time of hearing. In respect of difference in area of unit allotted in agreement/mentioned in offer of possession and mentioned in occupation certificate, he stated that final super area of the unit stands as 1157 sq. ft.. Complainants herein attempts to compare the FAR and the super area which cannot be practically done as the Super area is inclusive of the FAR + area of balcony/veranda+ proportionate common areas, while the occupation certificate has been attained for FAR only. Further, he referred to clause 1.10 of agreement for the definition of 'covered area and clause 1.33 for definition of 'super area'. Thereafter, he stated that the Haryana Building Code, 2017 was originally published on 30.06.2016 and revised on 06.01.2017, preface whereof reads as under:-

"Whereas the Government of Haryana observed that the different Development Agencies, Authorities/ Departments were implementing Building Rules as per their present Statute/Rules and it is also observed that the different provisions in Building Rules makes difficult for common man/ Entrepreneur/ Industrialist to carry out building work throughout State of Haryana uniformly. In order to streamline the provisions of Building Rules and to facilitate citizens, the Building Rules being followed by the different Agencies/ Departments/ Authorities were then repealed by the Government and the Haryana Building Code, 2016 was made applicable to entire State of Haryana from 30.06.2016.



Thereafter, considering and examining several representations/ suggestions received on the Code the Code has been revised as the Haryana Building Code, 2017."

18. It has been submitted that the provision of Occupation Certificate is enshrined in Clause 4.10 of Chapter IV of the Haryana Building Code, 2017 and the concept of Occupation Certificate through "Self Certification" is enshrined in Clause 4.11 of the Chapter IV of the Haryana Building Code, 2017. By referring to relevant provisions, he submitted that perusal of relevant clauses makes it clear that grant of occupation certificate has to be done in a technical manner as defined in the Haryana Building Code, 2017, in accordance with several provisions. So, claim of complainant is misguided and erroneous. Further he argued that provisions of contract are sacrosanct and binding upon both the parties. Complainant willfully, without consent accepted each and every terms of agreement. Now, at this stage he cannot preclude himself from abiding by the terms of agreement. The intent and purpose for which agreement was executed has to be given effect in case complainant does not want to come out of said agreement. He stated that the complainant has wrongly challenged the payment of dues with respect to the GST, VAT, delayed payment interest, club membership, cost escalation, holding charges and maintenance charges. Payments in regard to the same were mutually and voluntarily agreed between the complainant in different clauses of agreement. In support, he referred to para 11, 14 and 15 of judgement dated 19.11.2010 passed by Hon'ble Supreme



Court in Civil Appeal No. 550,551,1611 of 2003 titled as DLF Universal Limited and Anr. Vs Director, Town and Country Planning Haryana and other.

G. ISSUES FOR ADJUDICATION

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

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.1 Objection regarding impleadment of respondent no. 2 as party to complaint.

Respondent no. 1 in its written reply has stated that present complaint pertains to an independent floor bearing no. H4- 21 SF, on 2nd Floor admeasuring 1157 sq. ft super area in the real estate Project "Park Elite Floors" being developed by the Respondent No. 1. The Respondent No. 2 is a mere confirming party to the Agreement. Neither the Respondent No. 2 is a necessary party nor a proper party to the present case and no relief has been claimed from the Respondent No. 2 and hence, its name should be deleted from the array of parties. Perusal of file reveals that complainants have paid all amount/carried out transaction with respondent no. 1 only. No relief in specific has been claimed against respondent no. 2. Hence, no direction is passed in this order against respondent no. 2.



F.II Objection regarding deemed date of possession.

Complainants in their pleadings have taken 36 months from date of execution of builder buyer agreement, i.e. 14.08.2014 as deemed date of possession which works out to 14.08.2017. They are claiming delay interest w.e.f 14.08.2017. Respondent in its written statement has taken a plea that as per the Clause 5.1 read with 1.3 and 1.11, the possession had to be offered as per the payment plan opted by the purchasers, with an additional grace period of 180 days. That as per the payment plan, the stage of offer of possession is after the completion of flooring, however, the stage reached is "On completion of brickwork" and hence, the claim of the Complainant is pre-mature. In this regard, Authority is of view that respondent claimed to have reached the stage 'on completion of brick work' but respondent is in receipt of amount of Rs 24,61,521.34/- till year 2014 against basic sale price of Rs 22,89,428/-. After completion of brick work, only two installments were left, first 'on completion of flooring' and second 'on notice of possession'. It implies that respondent after completion of brick work in year 2014 took 10 years to complete next two stages of construction that too after receipt of amount more than the basic sale price. Respondent had filed its reply on 05.12.2023 and as on that date, stage of brick work was still going on. Time period of 10 years taken by respondent to complete next two stages of construction, i.e. flooring and possession is not a reasonable explanation. There is no justification on



record as to how this time period is actually incurred for completing the unit in question. Respondent herein is claiming benefit out of its own wrong. In case, if we look at this case from different angle, then the respondent may take time period of 10-15 or 20 years to carry out the construction of unit and in terms of agreement, the stage of possession has not yet arrived even after 20 years, then the case is still pre-mature as respondent has neither completed the construction work nor raised any demand/installment during all this 20 years. Complainant who has already paid more than basic sale price shall patiently wait for good number of years for possession and that too without any reasonable explanation for delay. Such a proposition is not acceptable being devoid of merit. Authority observes that builder buyer agreement was executed between the parties on 14.08.2014. In absence of specific timelines of deemed date of possession in builder buyer agreement, it cannot rightly be ascertained as to when the possession of said floor was due to be given to the complainant. In **Appeal no 273 of 2019 titled as TDI Infrastructure Ltd Vs Manju Arya**, Hon'ble Tribunal has referred to observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time of completion of construction work and delivery of possession. In the present complaint, builder buyer agreement was executed between the parties on



14.08.2014, accordingly, taking a period of 3 years from the date of agreement i.e 14.08.2014 as a reasonable time to complete development works in the project and handover possession to the allottee-complainants, the deemed date of possession comes to 14.08.2017.

F.III Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case works out to 14.08.2017. Therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondent or not? 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 for two fold reasons, firstly, as respondent had claimed that NGT orders passed in year 2016 has been one of the cause for delay in construction activity of the project. It is pertinent to mention here that respondent herein is in business of real estate sector and is well aware of fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondent considering all such factors. Secondly, respondent himself had



promised to deliver possession of unit to complainant so any delay if has occurred during completion of apartment, the respondent cannot burden it upon complainant. Complainant is not at fault for trusting respondent by depositing the amount to respondent in return of delivery of possession of unit. Therefore, now, the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions.

As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”



Moreover, the respondent has not provided the construction status of unit in question with latest photographs on record to support the fact that respondent has fulfilled its obligations and it is complainants who are shying away from their duties/obligations. In the same terms, it is a mere submission by respondent that complainant did not honour demand letters on time as no demand in particular has been pin pointed to establish it. 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.

F.IV Objection raised by the respondent to the claim of delay interest of complainant after execution of affidavit cum undertaking dated 22.05.2014.

Respondent has also taken an objection that complainants at the time of purchasing unit has conducted due diligence to their satisfaction and were acquainted with the terms and condition so the application form for allotment of FBA prior to signing the same and subsequent undertaking their signatures on the same, complainants are bound by each clause of said form including clause 13 which provides that in case company fails to offer possession of floor within 30 months from date of issuance of sanction letter of project, it shall be liable to pay compensation @ Rs. 5/- per sq.ft. for every month of delay thereafter. Now, respondent states that relief of delay interest being claimed by complainants are beyond the



terms of application form or FBA as same was given up by complainant vide undertaking dated 22.05.2014, therefore the Authority lacks the jurisdiction to decide the delay interest.

To deal with this objection reference is made to **Civil Appeal no. 12238 of 2019** titled as **Pioneer Urban Land & Infrastructure Ltd v/s Govindan Raghavan**. Operative part of the said judgment is being reproduced below:

Section 2 (r) of the Consumer Protection Act, 1986 defines 'unfair trade practices' in the following words : "'unfair trade practice' means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice ...", and includes any of the practices enumerated therein. The provision is illustrative, and not exhaustive.

In Central Inland Water Transport Corporation Limited and Ors. v. Brojo Nath Ganguly and Ors.,⁴ this Court held that :

"89. ... Our judges are bound by their oath to 'uphold the Constitution and the laws'. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and equal protection of the laws. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the



great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them.

It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not 4 (1986) 3 SCC 156.

It applies where both parties are businessmen and the contract is a commercial transaction. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances." (emphasis supplied) 6.7. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the Agreement dated 08.05.2012 are ex-facie one-sided, unfair, and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the Builder.

7. In view of the above discussion, we have no hesitation in holding that the terms of the Apartment Buyer's Agreement dated 08.05.2012 were wholly one-sided and unfair to the Respondent – Flat Purchaser. The Appellant – Builder could not seek to bind the Respondent with such one-sided contractual terms.



In this case, respondent promoter and complainants were not having equal bargaining power and respondent promoter was in a dominant position. Complainants were bound to sign on dotted lines of undertaking to get the booking endorsed in their favor. Said application form and undertaking is ex-facie one-sided, unfair, and unreasonable. Therefore said undertaking cannot bind the complainants with such one-sided terms.

F.V Objection raised by the complainant in respect of difference in area provided in offer of possession dated 16.02.2024 and occupation certificate dated 15.12.2023

Complainant's submissions is that the respondent is in receipt of occupation certificate which is for area 977 sq ft. whereas area of the unit as provided in offer of possession is 1157 sq. ft. So, it has been requested that respondent be directed to charge only for the area approved in occupation certificate, i.e. 977 sq. ft. To this, it is the argument of respondent that neither in pleadings nor in relief sought, there is mention of such plea so any relief beyond pleadings cannot be awarded to complainants. Further, ld. counsel for respondent submitted that grant of occupation certificate is a technical process being followed in consonance with provisions of Haryana Building Code and does not cover all area like stair case, lifts, lobby area etc. but complainant is liable to pay for these areas also. In respect of objection of respondent that relief beyond leadings cannot be awarded to complainants, it is observed by the



Authority that complainants herein are seeking valid offer of possession alongwith delay interest. The term 'valid offer of possession' duly incorporates all legal demands only which respondent can justifiable claim from complainants. Demand of payment as per approved area is a part of legal demands which can be raised by respondent. So, in essence demand for area whether approved or increased is a part of valid offer of possession. Hence, objection of respondent is rejected being devoid of merit. Further, in respect of issue of difference in area as provided in offer of possession dated 16.02.2024, i.e. 1157 sq. ft and occupation certificate dated 15.12.2023, i.e. 977 sq. ft. , Authority observes that respondent is entitled to charge only for the area of the unit which is actually provided to allottee at the time of handing over of possession. Any area over and above the approved area mentioned in occupation certificate cannot be burdened upon the allottee. Further, it is pertinent to refer to definition of Floor Area Ratio (FAR)- clause 1.2 (xli) of Haryana Building Code,2017 which clearly establish that lift, mumty, balcony, parking , services and storages shall not be counted towards FAR. Any area beyond FAR is not a saleable area of project. However, cost of construction of all such structures which are not included in FAR can be burdened upon total cost of the unit; but cannot be charged independently making it a chargeable component of unit. Hence, the plea of respondent deserves to be rejected and respondent



is directed to re-calculate the price of area of unit, base of the unit area provided in occupation certificate i.e. 977 sq. ft.

20. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. H-4-21-SF, admeasuring 1157 sq. ft (now area of unit as discussed in aforesaid paragraph is 977 sq. ft) had been allotted to original allottees in the project of the respondent namely "Park Elite Floors" situated in Parklands, Faridabad, Haryana vide allotment letter dated 24.12.2009. Complainants had purchased allotment rights of unit in question vide nomination dated 27.05.2014. As per floor buyer agreement dated 14.08.2014 executed between complainants and respondent, possession of the unit should have been delivered by 14.08.2017.
21. Authority further observes that possession of the unit should have been delivered by 14.08.2017 but it is an admitted fact that respondent had miserably failed to fulfill his obligation to deliver the possession of the unit within stipulated time. Now, after a lapse of 7 years, respondent has offered possession of unit on 16.02.2024 alongwith additional demand of Rs 8,52,316.30/-. Complainants by way of filing rejoinder has challenged the illegal demands raised alongwith said offer of possession. Details of such objections raised by complainants are incorporated in para 13 of this order. 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 2014 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 14.08.2017. Further, objection to each illegal demand raised by complainants is dealt with at length in following manner:-

- a. Firstly, with regard to the **increase in area from 876 sq. ft to 1157 sq. ft. and then final area approved in occupation certificate is 977 sq. ft.** Authority is of the view that respondent has received occupancy certificate for the unit in question which is for an area measuring 977 sq. ft. As discussed in aforesaid paragraph no. F.IV, the respondent shall charge from complainants only for the final area 977 sq. ft.
- b. Secondly, with regard to the **cost escalation charges of Rs 53,725.08/-**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 14.08.2017. The respondent issued a letter offering possession on 16.02.2024, despite the deemed date of possession being in 2017, resulting in an 7-year delay. Additionally, the offer was accompanied with demands which are not acceptable to complainants being unjust and unfair. In said offer, the respondent 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 complainants. The complainants, having already endure 7-year delay, should not be penalized with cost escalation charges for a delay that was entirely the fault of the respondent. 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 are hereby set aside.

- c. Thirdly, with regard to the demand raised by the respondent on account of **club charges of Rs 50,000**, 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 unit has been obtained by the respondent on 15.12.2023. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainants has explicitly stated at the time of arguments 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 non-existent 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. However, respondent will become entitled to recover it in future as and when proper club will become operational at site.

- d. Fourthly, with regard to the demand raised by the respondent on account of **interest of Rs 1593/- charged on account of delayed installment**, Authority is of the view that respondent has not placed documentary evidence specifically demand letters for proving on record that complainants made delay in honoring any demand letter. Moreover, respondent is already in receipt of Rs 24,61,521/- since year 2014 which is more than the basic sale price of Rs 22,89,428/-. In these circumstances, the respondent is not allowed to claim charges of interest.
- e. Fifthly, with regard to the demand raised by the respondent on account of **GST**, Authority is of the view that deemed date of possession in this case works out to 14.08.2017 and charges/taxes applicable on said date are payable by complainants. Fact herein is that GST came into force on 01.07.2017, i.e. prior to deemed date of possession. So, the complainant is liable to pay GST charges.
- f. Lastly, complainants has raised an objection that **respondent is in receipt of Rs 24,61,521/- since year 2014 whereas in offer of possession dated 16.02.2024, respondent has mentioned paid amount as Rs 22,80,521/-**. Perusal of receipts and statement of



account dated 07.08.2022 annexed as Annexure C-5 clearly reveals that complainants has paid an amount of Rs 24,61,521.34/-. Thus, respondent is directed to consider total paid amount as Rs 24,61,521.34/-.

22. Now, issue which remains to be adjudicated is delay interest. Respondent had offered possession of unit on 16.02.2024 after receipt of occupation certificate dated 15.12.2023. Said offer of possession was issued after delay of around 7 years from deemed date of possession, i.e., 14.08.2017. Complainants herein are interested in having possession of their unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has made valid offer of possession to the complainants on 16.02.2024. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession, i.e., 14.08.2017 up to the date on which a valid offer is sent to them after receipt of occupation certificate, i.e., 16.02.2024. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.
23. 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”.

24. 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;



25. 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 (MCLR) 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”.

26. 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., 26.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.
27. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the due date of possession i.e. 14.08.2017 to date of valid

offer of possession, i.e. 16.02.2024. till the date of a valid offer of possession.

28. Authority has got calculated the interest on total paid amount from due date of possession i.e. 14.08.2017 till the date of valid offer of possession i.e. 16.02.2024 which works out to Rs 17,41,152/- as per detail given in the table below:

Complainants claims to have paid an amount of Rs 24,61,521.34/-. In support receipts of Rs 23,91,103.84/- has been annexed in complaint file as Annexure R-5. For total paid amount statement of account has been annexed at page 66 of complaint. Accordingly, an amount of Rs 23,91,103.84/- is taken from receipts annexed in complaint file and remaining/differential amount of Rs 70,417.5/- is taken from statement of account dated 07.08.2022.

In complaint no. 2372/2022

| Sr. No. | Principal Amount (in ₹) | Deemed date of possession or date of payment whichever is later | Interest Accrued till 16.02.2024 (in ₹) |
|---------------|-------------------------|---|---|
| 1. | 23,91,103.84 | 14.08.2017 | 17,29,181 |
| 2. | 70,417.5 | 07.08.2022 | 11,971 |
| Total: | 24,61,521.34/- | | 17,41,152/- |

had

In complaint no. 2210/2022

Builder Buyer Agreement for unit no. PC-44-FF, having area 1025 sq. ft was executed between the parties on 31.01.2012. As per clause 5.1 of it, possession was supposed to be delivered within 24 months from date of execution of agreement alongwith grace period of 180 days for applying for occupation certificate. Fact herein is that respondent applied for occupation certificate on 14.02.2020 as stated in its reply. It is not the case that respondent applied for occupation certificate after expiry of 24 months, i.e. 31.01.2014. So, the grace period of 180 days cannot be allowed to respondent. Accordingly, for purpose of calculation deemed date of possession is taken as 31.01.2014.

| Sr. No. | Principal Amount (in ₹) | Deemed date of possession or date of payment whichever is later | Interest Accrued till 26.09.2024 (in ₹) |
|--|-------------------------|---|---|
| 1. | 20,43,163.61 | 31.01.2014 | 24,18,227 |
| 2. | 2,48,415 | 20.05.2019 | 1,47,842 |
| 3. | 3,37,856 | 12.03.2020 | 1,70,557 |
| 4. | 55,487 | 27.07.2022 | 13,381 |
| 5. | 20,500 | 02.08.2022 | 4906 |
| Total: | 27,05,421.61/- | | 27,54,963/- |
| Monthly interest commencing w.e.f 26.10.2024. | 27,05,421.61/- | | 24,682/- |



It is pertinent to mention here that offer of possession was issued by respondent to complainant on 15.02.2020, however occupation certificate was received by respondent on 25.03.2021. Said offer was not a valid offer of possession as it was not supported with occupation certificate. So, the complainant was not bound to accept the same and to pay outstanding amount raised alongwith offer of possession. Fact remains that respondent has not issued any possession letter till date after receipt of occupation certificate. So, respondent is directed to offer possession to complainant within next 45 days alongwith statement of receivables and payables made in consonance with observations made in this order.

F. DIRECTIONS OF THE AUTHORITY

29. 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) In complaint no. 2372/2022, respondent is directed to handover actual physical possession of unit within next 45 days alongwith statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 17,41,152/- to the complainants towards delay already caused in



handing over the possession. It is pertinent to mention here that respondent has already tendered two cheques to the tune of Rs 12,46,774/- towards delay interest bearing no. 002608 dated 11.07.2024 for an amount of Rs 6,23,387/- and bearing no. 002609 dated 11.07.2024 for an amount of Rs 6,23,387/- issued in favor of complainants. Said cheques were handed over to the Id. counsel for complainants in the Court itself.

(ii) In complaint no. 2210/2022, respondent is directed to offer possession of unit within next 45 days alongwith statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 27,54,963/- to the complainant towards delay already caused in handing over the possession and monthly interest of Rs 24,682/-. It is pertinent to mention here that respondent has already tendered cheque to the tune of Rs 14,82,565/- towards delay interest bearing no. 002607 dated 11.07.2024 issued in favor of complainant. Said cheque was handed over to the Id. counsel for complainant in the Court itself.

(iii) Further respondent is directed to execute conveyance deed within 90 days after handing over of valid legal possession to complainants.

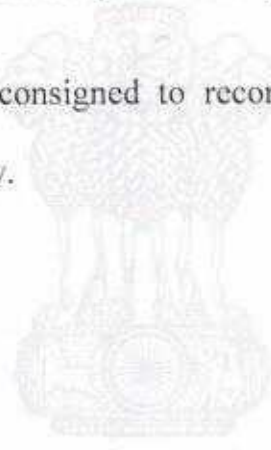


(iv) Complainants will remain liable to pay balance consideration, if any, amount to the respondent at the time of actual possession offered to them.

(v) The rate of interest is chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

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




CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]