



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2405 of 2022
Date of filing.:	16.09.2022
First date of hearing.:	08.02.2023
Date of decision.:	26.09.2024

Sanjay Sharma, S/o Late Sh. Ram Pal Sharma,
R/o, WZ-128, Basai Dara Pur, Moti Nagar,
New Delhi-110015.

....COMPLAINANT

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)

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

Present: - Sh. Arjun Kundra, Counsel for the complainant
Sh. Hemant Saini, Counsel for both the respondents.

ORDER (NADIM AKHTAR-MEMBER):

1. Present complaint has been filed on 16.09.2022 by the 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 Elite Floors, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit allotted	LM-4-51-SF , 2 nd floor, admeasuring 1203 Sq. Ft.(111.808 sq. mtr.)
5.	Date of Allotment	24.12.2009



	letter issued in favor of complainant	
6.	Date of builder buyer agreement with complainant	08.06.2010
7.	Due date of possession	08.06.2012
8.	Possession clause in BBA (Clause 4.1)	<p>Clause 4.1</p> <p><i>Subject to Clause 13 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 total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from the date of sanction of building plan. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with</i></p>



		<i>regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).</i>
10.	Total/Basic sale consideration	₹22,37,003/-
11.	Amount paid by complainant	₹29,60,548.42/-
12.	Offer of possession.	Not issued till date.
13.	Date of occupation certificate	02.03.2023
14.	Date of Cancellation letter	17.08.2019 and 30.08.2022

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

- That the complainant applied for booking an apartment in the respondent's project namely, '-Park Elite Floors, Faridabad' by paying Rs 2,50,000/- on 29.05.2009. Thereafter, unit no. LM-4-51-SF (hereinafter referred to as the said unit) was allotted to the complainant vide allotment letter dated 24.12.2009.
- That Builder Buyer Agreement (BBA) was executed between the complainant and respondents on 08.06.2010. As per terms of the



agreement possession of the unit was to be delivered latest by 08.06.2012. However, respondent has not made any valid offer of possession till date. That the basic sale price of the unit was fixed at ₹22.37 lacs out of which complainant had already paid an amount of ₹ 29,60,548.42/- for the booked unit between the years 2009-2017. Copies of payment receipts and statement of account issued by respondent are annexed as Annexure C-5.

5. That the complainant has made all the payments on time but 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 complainant. The complainant on the other hand had already made the payment of the majority of the sale consideration and therefore have no other option than to place reliance on the words of the respondents. The possession of the residential floor has been due since May 2012 but till date the same has not been delivered and there is no sign of completion of the same in the near future. The respondents companies have committed gross deficiency in services and have indulged in unfair practices. The Complainant had made the booking of the residential floor for the personal residential needs and require immediate possession of the same along with the prescribe rate of interest on the paid amount as delayed penalty.



6. That the respondents instead of completing the project and obtaining the occupancy certificate, offered the possession of the unit to the complainant prematurely on 11.05.2018 with the intention to usurp the balance due instalments. Complainant immediately protested to the "offer of possession dated 11.05.2018 and got issued a legal notice dated 20.05.2018 to the respondents for seeking compensation/delay interest for huge amount of delay but received no response from the respondents.
7. That vide notice dated 01.06.2018, complainant pointed out to the respondents various defects, deficiencies and incomplete works in the project, but again, received no response from their end. The complainant continued to write to the respondents but failed to receive any response from them. Copies of the several legal notices issued by the complainant are annexed as Annexure C-7 (colly).
8. That instead of responding to the queries of the complainant, the respondents herein illegally, arbitrarily and unfairly cancelled the allotment of the complainant vide their Cancellation Letter dated 30.08.2022. A copy of the cancellation letter dated 30.08.2022 has been annexed as Annexure-C-8. Complainant is aggrieved by the conduct of the respondents and inordinate delay in the completion and development of the project, therefore, approached to this Authority. Hence the present complaint.



C. RELIEFS SOUGHT:-

9. That the complainant seeks following reliefs and directions to the respondents: -

- i. Pass an order holding the "Termination/Cancellation letter" dated 30.08.2022 as illegal, arbitrary and unsustainable under law and further pass an order revoking and cancelling the same; and
- ii. Pass an order restoring the allotment of the unit of the Complainant i.e., Unit No.LM4-51-SF in project "park elite floors, Parklands, Faridabad, Haryana; and
- iii. Direct the respondent to deliver immediate possession of the floor of the complainant i.e., LM4-51-SF, BPTP Park Elite Floor, Parklands, Faridabad, Haryana admeasuring 1,381.00 sq ft. after due completion and receipt of occupancy/completion certificate along with all the promised amenities and facilities and to the satisfaction of the complainant after removal of deficiencies and defects; and
- iv. Pass an order terming the "offer of possession" dated 11.05.2018 as illegal and unsustainable and further direct the Respondent Company to issue fresh Offer of Possession to the Complainant, in terms of the Floor Buyer's Agreement dated 8th June 2010, after due receipt of the occupancy certificate; and



- v. Direct the respondents to pay prescribed rate of interest as per the act, on the amount already paid by the complainant from the promised date of delivery, i.e., 10th May 2012 till the actual physical and legal delivery of possession after receipt of the Occupancy Certificate; and
- vi. Pass an order waiving/setting aside/quashing the demands raised by the Respondent Companies which are either beyond the scope of agreement dated 08.06.2010 and/or illegal in nature and unsustainable under law including but not limited to penalty charges, cost escalation charges, maintenance charges, holding charges, club house charges, unilateral increase in BSP etc. and whatsoever and order refund of such amount to the complainants.
- vii. 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 RESPONDENTS:-

Learned counsel for the respondent filed a detailed reply on 06.12.2023 pleading therein as under:-

10. That present complaint pertains to an independent floor bearing no. LM-4-51 SF, on 2nd Floor admeasuring 1203 sq. ft super area in the real estate Project "Park Elite Floors" being developed by the Respondent No. 1. The Respondent No. 2 is mere a 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.

11. That unit was originally booked by the complainant through a booking form dated 25.05.2009. Pursuant to which a unit no. LM-4-51 SF admeasuring 1203 sq. ft. was allotted vide allotment letter dated 24.12.2009. A copy of the booking form dated 25.05.2009 is annexed as Annexure R1. A copy of the Allotment Letter dated 24.12.2009 is annexed as Annexure R2. Thereafter, a Builder Buyer's Agreement (BBA) was executed between the Parties on 08.06.2010. As per the Clause 4.1 read with clause 13 (force majeure events), the offer of possession was to be made within 24 months from the date of execution of agreement with an additional grace period of 180 days.
12. That the complainant consciously and willfully opted for construction linked plan for remittance of sale consideration of unit. Demands were accordingly raised as per the agreed plan and different forms of discounts including a timely payment rebate in the shape of timely payment discount of Rs 83,091/- and inaugural discount of Rs 1,00,665/- were granted to the complainant-allottee. That the respondent had duly informed the updates on construction alongwith photographs of project at each and every point of time so the complainant was aware of stage of construction and reason



for delay in handing over of possession. Hence, both parties on a mutual basis extended the date of possession of unit.

13. That respondent had sent reminder notices dated 04.07.2018, 21.08.2018 and 06.10.2018 to the complainant thereby asking the complainant to clear the outstanding dues against the payment request. Copy of reminder notices are annexed as Annexure R-5. Since the outstanding amount was not cleared by the complainant, the respondent vide letter dated 11.05.2018 issued offer of possession alongwith statement of accounts. Complainant did not come forward to take possession by making payment of outstanding due amount. Reminder notices dated 19.11.2018 and 29.04.2019 were issued to complainant for making payment. A copy of offer of possession is attached as Annexure R-6 and a copy of Final demand letters is attached as Annexure R-7.
14. That complainant failed to deposit the outstanding amount despite issuing of numerous reminders so the respondent served the termination/cancellation letter dated 17.08.2019. Copy of termination letter is attached as Annexure R-8. Then complainant even after passing of long period of 5 years failed to clear the outstanding dues so the respondents. Having no option left, in compliance of agreement which specifically provides for right of respondent to terminate/ cancel the allotment of unit, respondent accordingly cancelled the unit allotted to



complainant on 30.08.2022. Copy of cancellation letter dated 30.08.2022 is attached as Annexure R-9.

15. That the respondent had obtained occupation certificate for unit on 02.03.2023. A copy of same is attached as Annexure R-10.
16. That the complainant has failed to fulfil its obligations to pay the balance sale consideration of the said unit to the respondent. Hence, now the complainant has no locus to file the present complaint under reply against the Respondent. As per the law laid down by the Hon'ble Supreme Court in 'Bangalore Development Authority v. Syndicate Bank', (2007) 6 SCC 711, a party who has defaulted in fulfilling its part of obligation under the contract is not liable to any claim of possession against the non-defaulting party. Hence, the relief sought by the complainant is untenable in the eyes of law and the complaint is liable to be rejected on this ground alone.
17. That since the execution of the BBA till date, a number of circumstances beyond the control of the respondents, including but not limited to delay in payment by the complainant, force majeure events have unfolded that have affected the rights and obligations of the respondent under the BBA and in light of the same, the present complaint cannot be sustained.
18. 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 the case titled as "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, 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. ARGUMENTS OF COUNSELS FOR COMPLAINANT AND RESPONDENTS:-

19. Ld. counsel for complainant reiterated his submissions and pressed upon the relief of possession of booked unit alongwith delay interest and setting aside the termination/cancellation of unit. He further argued that complainant has already made payment of Rs 29,60,548.42/- till November,2017 which is more than the basic sale price of Rs 22,37,300/-. Thus, demands raised by respondent in the year 2018 were not genuine, specifically keeping in view the fact that respondent had delayed the construction of project beyond reasonable time of 3-4 years. Hence, complainant chose not to honour said demand letters. In respect of offer of possession issued on 11.05.2018, complainant raised his objection vide a legal notice dated 20.05.2018 which has not been replied by the respondent till date. Further, he submitted that respondent in its reply claims that occupation certificate stands received on 02.03.2023. So, he requested that respondent be directed to issue offer of possession for the area as approved by the competent authority in occupation certificate and to direct respondent not to charge illegal demands/taxes from complainant at the time of offer of possession.

20. Ld. counsel for respondents has argued that complainant nowhere in its pleadings as well as in reliefs 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 the complainant.



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 complainant herein attempts to compare the unit area with FAR and the super area which cannot be practically done as the FAR/Super area is inclusive of the area of balcony/veranda+ proportionate common areas, while the occupation certificate has been granted for the permissible 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."

21. 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 raising any objections accepted each and every terms of agreement. Now, at this stage he cannot preclude himself from abiding 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 further argued that respondent had raised demand letters dated 04.07.2018, 21.08.2018 and 06.10.2018 in consonance with the construction linked plan opted by complainant. Out of goodwill, respondent still offered possession of the unit to the complainant on 11.05.2018. But complainant still chose to remain silent about payment of outstanding dues amount. Pursuance to which, termination letter was issued to complainant on 17.08.2019. However, respondent in order to again wake up the complainant issued second termination letter dated 30.08.2022. Complainant himself is at fault by not coming forward to accept possession and to make payment of outstanding amount. Respondents rightfully terminated the unit of the complainant as provided in Clause 6.1 of

A handwritten signature in black ink, appearing to be the name 'had', is written over a horizontal line.

agreement. He read clause 6 during the course of arguments to press upon the event that in case complainant /allotee fails to pay due amount within 45 days then respondent is at liberty to terminate the allotment of unit after forfeiture of earnest money. He argued that at this belated stage complainant cannot seek relief of possession, the relief admissible is only refund of amount after forfeiture of earnest money. In support, learned counsel for the respondent placed reliance on judgement passed by Hon'ble Supreme Court in case titled as "K. S Vidyanadam Vs Vairavan" (1997) 3 SCC 1 wherein, it is observed that silence of the vendee for a long time will make it inequitable to give relief of specific performance. The plaintiff must perform his part within a reasonable period of time. He further argued that complainant in this case is seeking relief in terms of specific performance even without performing his own part of agreement, i.e., honoring of demand letters issued by respondent. Hon'ble Supreme Court in case titled as 'Bharati Knitting Co. Vs DHL Worldwide Express Courier Division' 1996 SCC (4) 704 has observed that when there is a specific term in the contract, parties are bound by the term in the contract.

G. ISSUES FOR ADJUDICATION

22. i. Whether termination/cancellation letter issued by respondent is valid or not?
- ii. Whether the complainant is 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 respondents.

F.I 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. LM-4-51 SF, on 2nd Floor admeasuring 1203 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.

Admittedly builder buyer agreement was executed between the parties on 08.06.2010 and as per clause 4.1 of it, possession was supposed to be delivered within 24 months from date of sanction of building plan alongwith grace period of 180 days for applying for occupation Certificate. None of the parties in their pleadings have mentioned the date



of sanction of building plan. So, taking 24 months from date of agreement, the deemed date of possession work out to 08.06.2012. Respondent in its written statement has taken a plea that grace period of 180 days be allowed as respondent had received occupation certificate on 02.03.2023. In this regard, Authority is of view that respondent was duty bound to complete the construction within 24 months of execution of agreement, i.e., by 08.06.2012 then time period of 180 days was provided for applying for occupation certificate. Herein this case, respondent did not abide by the terms of agreement and failed to complete construction within stipulated time. Accordingly, grace period of 180 days which could have been started from 08.06.2012 got extended by another 9-10 years, as occupation certificate was received by respondent on 02.03.2023. Time period of 10 years taken by respondent to complete the construction work and receipt of occupation certificate is not a reasonable duration. There is no justification on record that how this time period is actually incurred for completing the unit in question. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, plea of respondent to grant 180 days grace period is rejected.

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



The due date of possession in the present case works out to 08.06.2012. Therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration? 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. Any event/circumstance that has happened later in time to the deemed date of possession is of no meaning/hindrance upon construction work of project. It is pertinent to mention here that respondent herein is in business of real estate sector and is well aware of the 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 consideration amount to

A handwritten signature in blue ink, appearing to be the name 'Ishad', is written over a horizontal line.

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 stage wise construction status of unit in question with relevant photographs on record to support the fact that respondent has fulfilled its obligations and it is complainant who is shying away from their duties/obligations. 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 complainant in respect of difference in area provided in offer of possession dated 11.05.2018 and occupation certificate dated 02.03.2023.

Complainant's submissions is that the respondent is in receipt of occupation certificate dated 02.03.2023 which is for an area 1086.73 sq ft. whereas area of the unit as provided in offer of possession dated 11.05.2018 is 1381 sq. ft. So, it has been requested that respondent be directed to charge only for the area approved in occupation certificate, i.e. 1086.73 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 complainant. 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 pleadings cannot be awarded to complainant, it is observed by the Authority that complainant herein is 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 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 11.05.2018, i.e. 1381 sq. ft and occupation certificate dated 02.03.2023, i.e. 1086.73 sq. ft., Authority observes that respondent is entitled to charge only for the area of the unit which is actually to be 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, mummy, 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 is not included in FAR can be burdened upon total cost of the unit by the respondent 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, i.e. 1086.733 sq. ft.

F.V Objection raised by the complainant in respect of termination/cancellation letter dated 30.08.2022.

Complainant has raised a plea that termination letter issued by respondent is liable to be quashed for the reason that by the year 2017, the respondent was in receipt of Rs 29,60,548.42/- against basic sale price of



Rs 22,37,300/-, i.e, more than the basic sale price. So, the demand letters issued by respondent in year 2018 were not in consonance with the construction linked schedule. Further, he objected to offer of possession dated 11.05.2018 issued by respondent stating that said offer was not supported with occupation certificate. In reply, respondent submitted that demands were raised in consonance with construction linked plan agreed by complainant in agreement and offer of possession was issued on 11.05.2018 after completion of construction work of unit. But it is the complainant who has not come forward to accept it after payment of due amount so the respondent had chosen to exercise the option given in clause 6.1 of agreement, i.e., termination of unit after forfeiture of earnest money. In this regard, it is relevant to peruse offer of possession dated 11.05.2018 wherein demand of Rs 5,52,285/- (inclusive of Rs 1,74,000/- on account of stamp duty charges) was raised to complainant. But said offer was not supported with occupation certificate. Infact, occupation certificate has been received by respondent later in year 2023, i.e. 02.03.2023. So, the impugned offer of possession was not a valid offer of possession and complainant was not bound to accept it. Thereafter, respondent issued reminder letters on 04.07.2018, 21.08.2018, 06.10.2018 and 20.04.2019 for payment of said due amount, i.e. Rs 5,52,285/-. However, basis on which demand was raised, i.e., offer of possession dated 11.05.2018 itself was not valid, then demand/reminder letters have



no sanctity in eyes of law. Accordingly, respondent in case of non-receipt of dues issued termination letter first on 17.08.2019 and then on 30.08.2022. Issue herein arises is that respondent revoked the allotment of unit exercising its rights in clause 6.1 but did not proceed further towards returning of paid amount after forfeiture of earnest money to the complainant till date. Even in case, the basis of issuing termination letter was not a valid one but respondent should have acted pro-actively in deducting earnest money out of total paid amount and refunded the remaining amount to complainant. But fact is that paid amount still lies with respondent. In these circumstances, it is established that respondent chose to remain silent over its own obligation, i.e., to refund amount after forfeiture of earnest money from year 2018 to till date. Keeping in view the aforesaid discussion, the termination letters issued by respondent are declared illegal and are therefore set-aside.

23. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. LM-4-51-SF, admeasuring 1203 sq. ft (now area of unit as discussed in aforesaid paragraph is 1086.73 sq. ft) had been allotted to complainant in the project of the respondent namely "Park Elite Floors" situated in Parklands, Faridabad, Haryana vide allotment letter dated 24.12.2009. As per floor buyer agreement dated 08.06.2010 executed between complainant and respondent, possession of the unit should have been delivered by 08.06.2012.



24. Authority further observes that possession of the unit should have been delivered by 08.06.2012 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, respondent is in receipt of occupation certificate on 02.03.2023 but offer of possession has not been made thereafter to the complainant till date. Further, at the time of arguments, ld. counsel for complainant objected to demand of Rs 73,779/- raised on account of cost escalation, Rs 50,000/- for club membership charges, Rs 80,940/- for GST, increase in BSP due to increase in size and maintenance charges. 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 1203 sq. ft to 1381 sq. ft. and then final area approved in occupation certificate is 1086.73 sq. ft.** Authority is of the view that respondent has received occupancy certificate for the unit in question which is for area 1086.73 sq. ft. As discussed in aforesaid paragraph no. F.III. the respondent shall charge from complainant only for the final area 1086.73 sq. ft.
- b. Secondly, with regard to the **cost escalation charges of Rs 73,779/-**, it is observed by the Authority that deemed date of possession in captioned complaint is ascertained as 08.06.2012. The respondent issued a letter offering possession on 11.05.2018 (not supported with occupation certificate), infact valid offer of possession



duly supported with occupation certificate dated 02.03.2023 has not been made till date, despite the deemed date of possession being in 2012, resulting in delay of 12-year. Additionally, the offer was accompanied with demands which are not acceptable to complainant 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 complainant, having already endure 12-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 shall be 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 02.03.2023. But no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Ld. counsel for complainant has explicitly stated at 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 **GST**, Authority is of the view that deemed date of possession in this case works out to 08.06.2012 and charges/taxes applicable on said date are payable by complainant. Fact herein is that GST came into force on 01.07.2017, i.e. post deemed date of possession. So, the complainant is not liable to pay GST charges.
- e. Lastly, complainant has raised an objection that **respondent** is charging maintenance charges without handing over actual possession. In this regard, it is observed that complainant is liable to pay amount of Interest free maintenance security at the time of handing over of

A handwritten signature in blue ink, appearing to be 'had', with a horizontal line underneath it.

possession and thereafter, maintenance charges will become payable after taking over actual physical possession of unit.

25. Now, issue which remains to be adjudicated is delay interest. Respondent had not offered valid possession of unit till date even after receipt of occupation certificate on 02.03.2023. Complainant herein is interested in having possession of his 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 not valid offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e., 08.06.2012 up to the date on which a valid offer is sent to him after receipt of occupation certificate. For purpose of calculation delay interest is calculated upto date of this order. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

26. In the present complaint, the complainant 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".

27. 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;

28. 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".

29. 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%.

30. 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. 08.06.2012 to date of valid offer of possession, which is yet to be issued by respondent to complainant. For purpose of calculation delay interest is calculated upto date of this order and for further delay, if any caused by respondent, monthly interest is awarded.
31. Authority has got calculated the interest on total paid amount from due date of possession i.e. 08.06.2012 till the date of order, which works out to Rs 38,46,242/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 26.09.2024 (in ₹)
1.	26,01,025.68	08.06.2012	35,54,740
2.	27,027	02.07.2012	36,740
3.	27,181	18.03.2017	22,732
4.	3,05,314.74	24.11.2017	2,32,030



Total:	29,60,548.42/-		38,46,242/-
Monthly interest commencing w.e.f 26.10.2024.	29,60,548.42/-		27,010/-

F. DIRECTIONS OF THE AUTHORITY

32. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act,2016 to ensure the compliance of obligations 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 is directed to offer possession of the unit within next 45 days alongwith Statement of Account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 38,46,242/- to the complainant towards delay already caused in handing over the possession and monthly interest of Rs 27,010/-.

(ii) Further respondent no. 1 is directed to execute the Conveyance Deed within 90 days after handing over of the valid legal possession to the complainant.

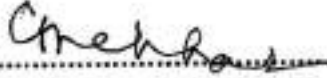
(iii) Complainant will remain liable to pay balance consideration, if any, amount to the respondents at the time of actual possession offered to him.



(iv) 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 respondents/ 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 more from the complainant which is not part of the Agreement to Sell.

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


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]