



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2505 of 2023
Date of filing.:	17.11.2023
First date of hearing.:	20.12.2023
Date of decision.:	17.09.2024

Sanjay Kumar Singh S/o Sh. Rajkumar Singh
R/o Rz-77B, Vaishali Palam Road, Delhi 110062

....COMPLAINANT

VERSUS

1. M/s BPTP Limited through its Managing Director
Registered office at 28 ECE House, 1st floor, KG Marg, New Delhi- 110001
2. M/s BPTP Parkland Pride Limited
Registered office at M-11, Middle Circle Connaught Circus,
New Delhi- 110001

....RESPONDENTS

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

Hearing: **4th**

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

Geeta Rathee

ORDER:

1. Present complaint has been filed on 17.11.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Sector 75-89, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	PE-79-GF measuring 1371 sq. ft.
6.	Date of floor/builder buyer agreement	02.03.2012
7.	Due date of possession	02.03.2014



8.	Possession clause in BBA (Clause 5.1)	<p>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect</p>
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		to the building of three independent residential floors including the floor. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).
9.	Total/Basic sale consideration	₹25,41,599/-
10.	Amount paid by complainant	₹29,52,212.22/-
11.	Offer of possession.	28.02.2020
12.	Termination letter/ cancellation	31.10.2020

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

3. Facts of complaint are that the complainant had booked a unit in the project being developed by the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in the year 2009. Complainant was allotted unit no. PE-79-GF measuring 1371 sq. ft., Ground Floor, Park



Elite Floors, Parklands, Faridabad vide allotment letter dated 06.10.2011. A builder buyer agreement was executed between both the parties on 02.03.2012. Basic sale price of the unit was fixed at ₹25,41,599/- out of which complainant had paid an amount of ₹29,52,212.22/-, i.e., more than basic sale consideration of the booked unit in the year 2009-2018. As per clause 5.1 of the agreement possession of the unit was to be delivered within a period of twenty-four (24) months from the date of execution of floor buyer agreement. From the date of execution of the agreement, the deemed date of possession works out to 02.03.2014. Further, from booking of the unit till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. The respondents were bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects. Although respondent had offer of possession to complainant on 28.02.2020 which was defective for following reasons:-

- i. Offer of possession dated 28.02.2020 was not accompanied with occupation certificate.


R. K. Rastogi

- ii. Respondent had charged illegally complainant on ground of unilateral increase in total sale price; cost escalation; club charges; levy interest of ₹ 34,753/-; GST amounting to ₹ 88,430/-; pre-typed indemnity and undertaking.
 - iii. Lastly offer of possession was not accompanied with any compensation on account of delay.
4. After issuance of above stated illegal offer of possession, complainant had protested the same but respondent rather than dealing with the issues in offer of possession had issued a cancellation letter dated- 31.10.2020 to complainant. It is further stated that this cancellation letter was also illegal and arbitrary as complainant had paid the entire amount in respect of unit in question to respondent in the year 2018 itself. It is an admitted fact that even after a lapse of more than ten years from deemed date of delivery of possession, respondents are not in a position to offer legal valid possession of the booked unit to the complainant. It is further stated that till date, the respondents have neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed for seeking relief of handing over possession of booked floor after due completion and receipt of occupation certificate along with delay interest as prescribed as per RERA Act, on the already paid amounts by complainants from the


Rathee

deemed date of possession i.e. 02.03.2014 till the actual physical delivery of possession and execution of conveyance deed.

C. RELIEF SOUGHT

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

1. Direct the respondent to deliver immediate possession of the unit PE-79-GF admeasuring 1371 sq. ft. in BPTP Park Elite floors, Parklands, Faridabad after due completion and receipt of Occupancy and completion certificates along with all the promised amenities and facilities.
2. Direct the respondent to pay prescribed rate of interest as per the RERA Act, on the amount already paid by the complainant from the promised date of delivery i.e. 02.03.2014 till the actual physical delivery of possession and execution of conveyance deed.
3. Restrain the respondent from charging any amount from the complainant which do not form part of Floor Buyer's Agreement dated 02.03.2012 but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges, etc. or direct respondent to refund/adjust any such



charges which they have already received from the complainant.

4. Further to set aside and quash the alleged illegal offer of possession dated 28.02.2020 and to issue fresh legal offer of possession after due completion and receipt of all the certificates and all permissions along with all the promised amenities and facilities, as promised and charged for and to the full satisfaction of the complainant.
5. Further to set aside and quash the receipt/demand of unilateral and illegal documents/undertaking/affidavits etc. to further quash/set aside the illegal termination and cancellation letter dated 31.10.2020 of present unit and to further restore it in favour of complainant.
6. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

6. Learned counsel for the respondents filed detailed reply on 09.02.2024 pleading therein:



Respondents have admitted allotment and execution of floor buyer agreement in favour of complainant. It is stated that in terms of builder buyer agreement (herein after referred as BBA) dated 02.03.2012 respondents had proposed to handover the possession of the unit within a period of 24 months from the execution of BBA along with a grace period of 180 days. He relied upon judgment passed by Ld. Tribunal, Chandigarh in **appeal no. 122 of 2022 titled as Emaar Mgf Land Ltd Vs. Laddi Paramjit Singh**, which states that if grace period is mentioned in the clause, the benefit of the same be given. Although in present case deemed date of possession was also subject to force majeure conditions such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority. After lifting of the ban it took some time to mobilize the resources and begin construction of the project. Thereafter, due to the sudden outbreak of the coronavirus (COVID 19) all the activities across the country including the construction of the projects came to a halt. He submitted that force majeure on different accounts including Covid-19 outbreak for relaxation be taken into consideration as Covid-19 outbreak lead to delay in handing over of possession, thus, the Covid-19 period may be taken as zero period for the purpose of calculation of delay possession interest. Secondly, timely payments by the complainant were essential for completion of



project on time but due to number of defaulter allottees in the project including present complainant project got delayed.

7. Further, respondent stated that there was delay and defaults in payment by complainant which could be gathered from para 11 of reply at page no. 15, wherein it is provided that the cheques issued by complainant bounced. Respondent relied upon judgment passed by Hon'ble Supreme court in case of **Saradmani Kandappan and Ors Vs. Rajalakshami and Ors decided on 04.07.2011, MANU/SC/0717/2011**, whereby complaint- allottee were also made bound to pay the installments in time bound manner. Since complainant did not pay as per payment schedule, he violated clause 7.1 of agreement and respondent is well within his right to terminate the unit. Further, despite there being numerous defaulting allottees in the project, including complainant, respondent no.1 has completed the construction and applied for occupation certificate on 18.02.2020 and obtained the same on 25.03.2021. Although offer of possession was made to complainant on. 28.02.2020 but same was valid for the reason that respondent had completed the construction at that time. Secondly, respondent had applied for occupation certificate on 18.02.2020 to the concerned department. Since offer to complainant was made on 28.02.2020 i.e. after application of occupation certificate, it makes it a valid offer of possession. Respondents stated that certain



things are not in their hands such as time consumed by the department in issuance of occupation certificate after filing application for the same. Since, complainant did not turned up to take possession of the unit even after receiving multiple reminders, respondent had cancelled the allotment vide cancellation letter dated 31.10.2020.

8. Lastly, respondents strongly objected to the maintainability of the present complaint on the ground of limitation as termination letter was issued on 31.10.2020 and present complaint was filed on 17.12.2023 i.e after 3 years and 11 days of termination of unit.
9. Respondents further stated there are two payments amounting to ₹ 1,02,800/- as inaugural discount and timely payment discount of ₹ 38,295.53/- which were accounted or adjusted in the accounts of complainant by respondent as a good will gesture for making timely payments to respondent. He stated that the said two amounts are included in the amounts paid by complainant and reflected in the account of complainant though same were never actually paid by them. Therefore, while taking into consideration total amounts paid by complainant for the purpose of making calculation for delay interest, these two mentioned amounts be deducted from total paid amounts by complainant.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

10. On perusal of file Authority observes that captioned matter was heard at length on last date of hearing i.e. 21.05.2024 and case was fixed for



pronouncement of judgment for today. Accordingly, Authority deals with the present complaint on merits below:

Findings on the objections raised by the respondent.

11. Objections raised by the respondent with regard to ascertaining of deemed date of possession:

i. Allowing grace period: Respondents had prayed for allowing grace period mentioned in builder buyer agreement. As per agreement clause 5.1 promoter had agreed to handover the possession of the unit in question within 24 months from the date of execution of floor buyer agreement. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the unit in question. As a matter of fact, builder buyer agreement was executed on 02.03.2012, 24 months from execution of said BBA comes to 02.03.2014. The promoter was under an obligation to apply for occupation certificate soon after 02.03.2014, however respondents had applied to the concerned Authority on 18.02.2020 for obtaining completion certificate/occupation certificate and obtained the same on 25.03.2021. It is very much clarified that respondent nowhere had applied near the time limit prescribed in the floor buyer agreement i.e immediately after completion of construction works within 24 months. Thus, as per the settled principle no one can be allowed to take



advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

ii. Delay in project due to other force majeure conditions.

Since respondent had failed to deliver possession within the period stipulated in the BBA dated 02.03.2012 i.e was 24 months from the execution of BBA, which comes to 02.03.2014. Hence, admittedly there is a delay on the part of the respondent and the various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2014 and the NGT order referred by the respondent pertains to year 2016, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (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 septemeber,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse



for non-performance of a contract for which the deadline was much before the outbreak itself.

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

So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

- 12. Another plea raised by respondent is issue of limitation:-** Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise.**

"It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

The promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would



not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

Respondent in his reply had admitted that occupation certificate was obtained on 25.03.2021 from the competent Authority. The very fact that offer of possession was made on 28.02.2020 was without occupation completion certificate is a sufficient ground to make said offer of possession legally invalid. Complainant had filed captioned complaint seeking relief of valid possession which has not yet been delivered by respondent. So, objection raised by respondent on ground of limitation, delay and laches does not hold any merit and is therefore rejected.

13. Findings on the 1 and 2 relief sought by the complainant i.e., to direct the respondent to handover possession of booked unit along with delayed possession interest at the prescribed rate of interest as per RERA Act, 2016 from the promised date of delivery of possession i.e. 02.03.2014 till the actual handing over of legal valid possession.

- i) 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”.

ii). Clause 5.1 of BBA provides for handing over of possession and is reproduced below:-

Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the



event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).

It is the argument of ld. counsel for complainant that after delay of almost ten years respondent had failed to fulfill his obligation to hand over legally valid possession of booked unit to complainant till date. Therefore, complainant's relief be allowed for handing over possession of booked unit along with delay interest.

Per contra, respondent had taken plea that possession was offered to the complainant on 28.02.2020 which was after applying for occupation certificate on 18.02.2020. However, complainant never came forward to take the possession. Various reminders were sent by respondent from the year 2009 to 2020. On 06.05.2020 final demand notice was also issued to complainant but to in vain. As stated above even offer of possession was also made to complainant on 28.02.2020, which was again not replied by complainant. When complainant did not adhered to any of the demand letters or offer of possession, respondent issued the cancellation letter on 31.10.2020. Now, after 3 years complainant cannot pray for relief of possession.



After hearing both parties, Authority observes that complainant had applied for booking of unit in project of respondent in the year 2009 and in total paid an amount of ₹29,52,212.22/- from the year 2009-2018 to respondents. However, respondent had cancelled the unit on 31.10.2020 for two reasons, firstly, when possession was offer to the complainant on 28.02.2020, after applying for occupation certificate on 18.02.2020 complainant did not come forward to take the possession. Secondly, various reminders were sent but complainant did not adhere to any of them, due to which cancellation letter was issued in year 2020 to complainants. In the above circumstances, the issues for consideration are as follow:

- i. **Firstly, Whether or not possession offered on 28.02.2020 by respondent was valid offer:** It is admitted fact by both the parties that possession offered on 28.02.2020 was not accompanied with occupation certificate. Hence, the very fact that occupation certificate at time of offer of possession was not even obtained by respondent, makes it clear that said offer can never be legally valid offer of possession.
- ii. **Second, issue was of cancellation letter issued by respondent on 31.10.2020:** Case of respondent is that reason for cancellation was on account of non- payment of pending dues by the complainant. As per receipts issued by the respondent, complainant had already paid the



almost 90% of amount i.e ₹ 29,52,212.22 out of basic sale price of ₹ 25,41,599/- from year 2009-2018 to respondent. Meaning thereby, there is no possibility of some major amount not to be paid by the complainant to respondent. Further, if the case of the respondent is taken to be true then also, respondent was under an obligation to refund the paid amount to the complainant immediately after cancellation letter was issued. However, in present case, respondent are enjoying the hard earned money paid by complainant since 2009 till date. Furthermore, when offer of possession itself is not valid, how a cancelation can be upheld valid. Respondent after receiving occupation certificate on 25.03.2021 has never offered a fresh legal offer of possession to complainant till date, which respondent should have done as per law. In view of above, Authority concludes that both offer of possession dated 28.02.2020 as well as cancellation letter dated 31.10.2020 issued by respondents were illegal and bad in law and hereby quashed.

14. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement. The Authority observes that the respondent has failed to fulfill its obligation stipulated in BBA dated 02.03.2012. Possession of the unit should have been delivered by



02.03.2014. Till date, after a lapse of 10 years, respondent failed to handover a legally valid possession to complainant. Since respondent company is yet to offer valid possession to complainant along with copy of occupation certificate and complainant do not wish to withdraw from the project and is rather interested in getting the possession of his unit after completion of construction and receipt of occupation certificate. In the 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 respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e., 02.03.2014 up to the date on which a valid offer is sent to him after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

Explanation.-For the purpose of this clause-



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

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

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

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

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

15. 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., 17.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. **11.1%**.

16. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to **11.1%** (9.10% + 2.00%) from the due date of possession i.e. 02.03.2014 till the date of a valid offer of possession.
17. **Findings on the other relief's sought by the complainant i.e. 3,4,5 at page 29 of complaint book:** Ld. counsel for complainant stated that as per relief no.3 the respondents be restrained from charging any amount which does not form part of the builder buyer agreement dated 02.03.2012 from the complainants at the time of offer of possession.

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 2009-2018 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 02.03.2014. Further, para 20 (v) of this order clarifies that respondent will not charge anything from the complainant which is not part of the agreement to sell. Further, cost escalation was due to delay on



part of respondent and the same cannot be burdened upon the allottee complainant. Furthermore, the payments on account of club membership charges shall be raised/demanded only at the time of offer of possession and offer of possession shall be as per the terms of agreement and in consonance with the provisions of the RERA Act,2016, Rules and regulations and principles laid down by the Authority through its judgments in complaint no. 113/2018-Madhu Sareen vs BPTP Ltd dated 16.07.2018.

In present complaint, complainants have also prayed for certain reliefs vide clause 4 and 5 mentioned ta page no. 29of complaint book. With respect to said relief's stated in clause 4 and 5, same stands allowed by the Authority in para no. 13-16 of this order.

18. Counsel for respondents have also stated that two payments amounting to ₹ 1,02,800/- as inaugural discount and timely payment discount of ₹ 38,295.53/- were credited into complainant account by respondents as a good will gesture for making timely payments to respondents. He stated that said amounts be deducted from the total paid amounts mentioned in account of complainant as said amounts were never actually paid by complainant. In this regard, Authority deems appropriate to not allow deduction of above mentioned two amounts from the paid amounts of complainant for two fold reasons. Firstly, complainant is not interested in withdrawing from the project and is willing to continue and wait till



project gets completed, meaning thereby, complainant is sticking to their decision and showing their willingness to have the booked unit for which they had already paid more than the basic sale price to the respondent in the year 2009-2018 itself. Secondly, it is obvious that respondents had credited those amounts in complainant account for making payments on or before time. Since, complainant has performed his part and is taking his unit for which he had paid in advance to respondents for which certain benefits were credited by respondents to complainant account. Now, respondents cannot be allowed to take those amounts back since complainant had completed their part of the agreement, however respondents have miserably failed to abide by terms of agreement.

19. Authority has got calculated the interest on total paid amount from due date of possession i.e. 02.03.2014 till the date of this order i.e. 17.09.2024 which works out to ₹ 33,09,117/- and further monthly of ₹ 26,934/- 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 17.09.2024 (in ₹)
1.	25,61,406.38/-	02.03.2014 (Due date of possession)	₹30,01,288/-
2.	1,25,805.84/-	21.04.2017 (Due date of possession or date of payment whichever is later)	₹1,03,566/-



3.	1,85,000/-	21.04.2017(Due date of possession or date of payment whichever is later)	₹1,52,297/-
4.	80,000/-	13.11.2018(Due date of possession or date of payment whichever is later)	₹51,966/-
Total:	₹ 29,52,212.22/-		₹ 33,09,117/-
Monthly interest:	₹ 26,934/-		

F. DIRECTIONS OF THE AUTHORITY


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

- (i) Respondent is directed to handover possession of the allotted unit no. PE-79-GF in real estate project "BPTP Park Elite Floor, Parklands, Faridabad" to the complainant within 30 days from uploading of this order on the website of the Authority along with copy of part completion certificate and statement of account of receivable and payable amounts after duly adjusting the delay interest allowed to complainant in this order below.



- (ii) Respondent is directed to pay upfront delay interest of ₹ 33,09,117/- (till date of order i.e. 17.09.2024) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 26,934/- till the offer of possession after receipt of occupation certificate.
- (iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
- (iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.1% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- (v) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

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


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CHANDER SHEKHAR
[MEMBER]


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