



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2476 of 2022
Date of filing.:	13.09.2022
First date of hearing.:	08.02.2023
Date of decision.:	29.11.2023

1. Arun Gupta S/o Sh. R.S. Gupta
2. Rekha Gupta W/o Sh. Arun Gupta
Both residents of House No.305, 2nd Floor, IP Colony,
Sector 30-33, Faridabad, Haryana.

....COMPLAINANT(S)

VERSUS

M/s BPTP Parkland Pride Limited
Registered office at M-11, Middle Circle Connaught Circus,
New Delhi- 110001

....RESPONDENT

CORAM: Nadim Akhtar
Dr. Geeta Rathee Singh

Member
Member

Present: - Sh. Pranjal P Chaudhary, Counsel for the complainants
Sh. Hemant Saini, Counsel for the respondent.

ORDER(NADIM AKHTAR-MEMBER):

1. Present complaint has been filed on 13.09.2022 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016

Nadim Akhtar

(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
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	P7-19-FF, 1 st Floor, Block-P admeasuring 876 Sq. Ft.
6.	Date of builder buyer agreement with original allottees	09.06.2010
7.	Due date of possession	09.12.2012
8.	Date of endorsement	03.05.2013
9.	Possession clause in BBA (Clause 4.1)	<i>Clause 4.1</i>



		<p><i>"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 if 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 building of three independent residential floors including the floor. The Seller/Confirming Party shall give</i></p>
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		<i>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)".</i>
10.	Basic sale consideration	₹16,08,004/-
11.	Amount paid by complainants	₹19,19,715/-
12.	Offer of possession.	None

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

3. That the original allottees/purchasers namely, Mr. Rahul Gupta & Neha Sharma had booked a unit in the project of the respondent, namely; "Park Elite Floors" situated at Faridabad, Haryana in the year 2009, by paying an amount of Rs 2,00,000/-. Complainants were allotted unit no. P7-19-FF, measuring 876 sq. ft. First Floor, Park Elite Floors, Parklands, Faridabad vide allotment letter dated 24.12.2009. A Builder Buyer Agreement (BBA) was executed between the original allottees and respondent on 09.06.2010. As per terms 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, i.e. latest by 09.12.2012. However, respondent has not made any offer of possession till date. That the basic sale price of the unit was fixed at ₹16.08 lacs out of which complainants had already paid an amount of ₹19,19,715/- for the booked unit from year 2009-2018.

4. That in the present case the complainants (Subsequent Allottees) derived their rights from the original allottee namely; Mr. Rahul Gupta & Neha Sharma vide endorsement dated 03.05.2013. Following which an addendum in this regard was executed between the parties on 08.11.2013.
5. That the respondent started demanding instalments through various illegal demand letters even when the stage of development was not in accordance with the demand raised as mentioned in the buyer agreement. Latest statement of account as available is attached as Annexure C-3. That despite the illegal demands raised by the Respondent the complainants kept paying as demanded, although they were not liable to pay in accordance with the demand raised as stage of construction for raising a particular demand was never reached.
6. That new tax regime CGST and SGST came into force in w.e.f July, 2017 and due to the delay caused in handing over of possession to the complainants, the complainants were burdened with GST charges.



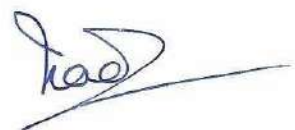
Respondent is liable to refund any tax burden which will be imposed on the complainant under GST laws.

7. The respondent deliberately delayed handing over possession and kept using the funds for their own interests. The complainants are aggrieved by the conduct of the opposite party as they had demanded and accepted the payments even when they had delayed the possession of the property. Hence the respondent be directed to pay interest over the amount received from the complainant from the deemed date of possession i.e., 09/06/2012 till the date of handing over of possession. That the Respondents have not only failed to deliver the possession of the unit in question within the timeline as stipulated in the terms and conditions of the Builder Buyer's Agreement dated 09/06/2010 but also acted in a manner of abusing their dominant position against the interest of the complainants. Hence the present complaint.

C. RELIEF SOUGHT

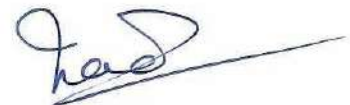
That the complainants seeks following reliefs and directions to the respondents: -

- i. In the event that the registration has been granted to the Opposite party for the abovementioned project under RERA Act read with relevant Rules, it is prayed that the same may be revoked under



Section 7 of the RERA Act, 2016 for violating the provisions of the RERA Act, 2016.

- ii. In exercise of powers under section 35 of RERA Act, 2016, direct the Opposite party to place on record all statutory approvals and sanctions of the project;
- iii. In exercise of powers under Section 35 of RERA Act, 2016 and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;
- iv. To compensate the Complainant for the delay in completion of the project by paying delay interest from 09/12/2012 till actual delivery of possession by paying interest on the total amount of Rs. 19,19,715/- at the rate in accordance with rule 15 of the RERA Act, 2016.
- v. To pay/refund any liability of GST which will be payable by the complainant as the same would not have been imposed upon the complainant if the possession was delivered on time.
- vi. To compensate the complainant for a sum of Rs. 1,00,000/- as damages on account of mental agony, torture and harassment;
- vii. In case the opposite party is not ready to handover the possession at the earliest then it prayed before this Hon'ble Authority to grant



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

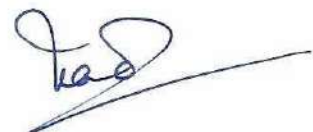
Learned counsel for the respondent filed detailed reply on 24.08.2023 pleading therein:

8. That 24.05.2009, Mr. Rahul Gupta & Neha Sharma (hereinafter referred to as "Original Allottee(s)") approached the Respondent for the booking of the residential unit in the project being developed by the Respondent namely "Park Elite Floors" located at Parklands, Faridabad, Haryana. and signed all the indicative/board terms of the Application/ Booking Form and opted for the construction-linked plan. Copy of the booking form dated 24.05.2009 is annexed as Annexure R/3. That Respondent issued the allotment letter dated 24.12.2009, whereby unit bearing no. P7-19-FF having a super built-up area tentatively admeasuring 876 sq. ft. was allotted to the Original Allottees.
9. That the Original Allottees, on 20.03.2013, transferred the Unit bearing no. P7-19-FF to the Complainants ("Subsequent Allottees"). Considering which the Respondent on 03.05.2013 endorsed and nominated the Unit bearing no. P7-19-FF in the name of the Complainants. Considering the said factum the contesting parties (i.e. the Complainants and the



Respondent) out of their free will, on 08.11.2013, executed an addendum to the FBA dated 09.06.2010. A copy of the endorsement letter dated 03.05.2013 along with the copy of the addendum dated 08.11.2013 are annexed as Annexure R/6.

10. That respondent in terms of the FBA apprised the Complainants that at the time of booking the tentative Super Built-Up Area of the above-mentioned unit was 876 sq. ft. (81.38 sq. meters). However, on measuring the dimensions of the unit now, with construction at an advanced stage, the Super Built Area stands revised to 1,044 sq. ft. (96.99 sq. meters). Simultaneously complainant was requested to remit a demand for an increase in super area by 09.08.2013. Copy of the demand letter dated 19.07.2013 is annexed as Annexure R/8. In addition to the aforesaid letter, complainant was again informed vide email dated 22.07.2013 & 25.07.2013 regarding the increase in super area and surfaced the detailed reasons for the increase of the same.
11. That respondent being the customer-centric organisation vide email(s) dated 21.06.2017, 28.07.2017, 30.07.2017, 19.08.2017. and 09.12.2017 apprised the Complainant(s) apropos the progress of construction at the site.
12. That respondent in line with the terms of Clause 4.1 of the FBA subject to Clause 13, i.e., the force majeure proposed to handover the possession of



the unit within 24 months from the date sanctioning of building plans. Since the building plans were sanctioned on 12.10.2012, thus, the due date of possession, subject to force majeure and inclusive of the grace period, tentatively arrives on 12.04.2015.

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 has 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.

14. In reference to GST charges, it is denied that the new tax regime and CGST and SGST will be additionally burdened on the complainant and the respondent is liable to refund the tax burden. Further, complaint in regard to grant of compensation on account of mental agony and harassment shall be dismissed in view of the prevalent precedents and stare decisis of the Hon'ble Apex Court in the matter titled as "**M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. Etc**".

E. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENT

15. Ld. counsel for complainants reiterated his submissions and pressed upon for relief of possession of booked unit alongwith delay interest. Ld. counsel for respondent also reiterated the submissions made in written statement specifically emphasizing upon the calculation of deemed date of possession w.e.f 12.10.2012, i.e., date of sanction of building plans.



F. ISSUES FOR ADJUDICATION

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

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

F.I Objection regarding deemed date of possession.

Complainants in their pleadings has taken 24+6 months from date of builder buyer agreement, i.e. 09.06.2010 as deemed date of possession which work out to 09.12.2012. They are claiming delay interest w.e.f 09.12.2012. Respondent in its written statement has taken a plea that clause 4.1 of BBA specifically provides that Respondent proposed to handover possession of unit within 24 months from date of sanctioning of building plans. Since the building plans were sanctioned on 12.10.2012, thus, the deemed date of handing over of possession with grace period tentatively arrives on 12.04.2015. In this regard, Authority is of view that respondent claimed to have got sanctioned the building plans after approximately 2 years of execution of agreement with complainants on 12.10.2012. There is no denial in fact that clause 4.1 of agreement provides for 24 months from date of sanction of building plans. However, respondent has not placed on record to substantiate the claim of sanction



of building plans. No documentary evidence has been placed on record in support of it. Authority being quasi-judicial body deals with cases in summary nature wherein documents are required for proper adjudication of case. Without documentary evidence, the plea of respondent does not hold any merit and cannot be relied upon. Therefore, the deemed date of possession cannot be calculated w.e.f date of sanction of building plans. In absence of proper documents, the deemed date is calculated by taking 24+6 months from date of builder buyer agreement, which comes out to 09.12.2012.

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

The due date of possession in the present case as per clause 4.1 as detailed in aforesaid paragraph, works out to 09.12.2012. 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? The obligation to deliver possession within a period of 24+6 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction



activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2012 and the NGT order referred by the respondent pertains to the month of April, 2015 and November, 2016. It is pertinent to mention that the respondent has failed to place on record any copy of the orders of the NGT justifying the applicability of the ban so imposed upon construction.

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 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 complainant who is shying away from her 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.

17. It has been admitted between both the parties, upon booking, a unit bearing no. P-7-19, admeasuring 876 sq. ft had been allotted to original allottee 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 09.06.2010 executed between original allottees and respondent, possession of the unit should have been delivered by 09.12.2012. Complainants had purchased allotment rights of unit in question vide endorsement dated 03.05.2013.



18. Authority further observes that as per agreement clause 4.1 possession of the unit should have been delivered by 09.12.2012 but it is an admitted fact that respondent had miserably failed to fulfill his obligation to deliver the possession of the unit till date. Now, even after a lapse of 12 years, respondent is not in a position to handover possession of the unit since respondent company has yet not received occupation certificate. Complainants do not wish to withdraw from the project and are rather interested in getting the possession of their unit. Learned counsel for the complainants has clearly stated that complainants are ready to wait for possession of unit after completion of construction and receipt of occupation certificate. 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 not made any offer of possession to the complainants till date. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date of possession i.e., 09.12.2012 up to the date on which a valid offer is sent to them after receipt of occupation certificate. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.



19. 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”.

20. 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;

21. 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".

22. 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., 29.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
23. 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 10.75% (8.75% + 2.00%) from the due date of possession i.e. 09.12.2012 till the date of a valid offer of possession.
24. Authority has got calculated the interest on total paid amount from due date of possession i.e. 09.12.2012 till the date of this order i.e. 29.11.2023 which works out to ₹20,02,377/- and further monthly of ₹16,962/- as per detail given in the table below:



Complainants claims to have paid an amount of Rs 19,19,715/-. In support receipts of Rs 18,93,445.43/- has been annexed in complaint file as Annexure R-2. For total paid amount statement of account has been annexed as Annexure R-3. Receipt of amount of Rs 14,721/- paid against VAT is attached at page no. 206 of written statement. Accordingly, an amount of Rs 18,93,445.43/- is taken from receipts annexed in complaint file and amount of Rs 14,721/- (VAT) is taken from receipt annexed in written statement. Remaining/differential amount of Rs 11,548.57/- is taken from statement of account dated 13.05.2022.

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 29.11.2023 (in ₹)
1.	7,98,262.07	09.12.2012	942299
2.	1,78,681.7	28.06.2013	200345
3.	2,31,641	03.08.2013	257269
4.	2,24,743.97	18.10.2013	244578
5.	45,696.67	12.08.2015	40807
6.	1,80,000	12.08.2015	160738
7.	2,34,420.02	24.03.2018	143399
8.	14,721	15.12.2016	11017
9.	11,548.57	13.05.2022	1925
Total:	19,19,715/-		20,02,377/-
Monthly interest:			16,962/-



25. Further, complainant in para v. of relief sought as mentioned above in this order has sought relief *"To pay/refund any liability of GST which will be payable by the complainant as the same would not have been imposed upon the complainant if the possession was delivered on time."* In this regard, it is observed that complainants till date has not made any payment towards GST till date. Said fact is evident from the receipts annexed as Annexure C-2 and statement of account annexed as Annexure C-3 to complaint. Hence, no case of refund of GST charges is made out in present complaint. Further, it is pertinent to mention here that complainants have not referred any demand letter/email wherein demand of GST has been raised by respondent. So, this relief cannot be adjudicated being pre-mature in nature. So, no direction is passed against relief clause (v) mentioned in relief sought of this order.
26. With respect to relief clause no. a, b, and c, learned counsel for complainant has limited his prayer regarding relief of possession with delay interest and compensation by giving up reliefs mentioned in these clauses. Therefore, reliefs mentioned in clause a, b and c of relief sought of this order are hereby vacated.
27. The complainants are seeking compensation on account of mental agony and harassment. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors." (supra.), has held that



an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the relief of compensation.

F. DIRECTIONS OF THE AUTHORITY

28. 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 pay upfront delay interest of ₹ 20,02,377/- (till date of order i.e. 29.11.2023) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 16,962/- till the legal offer of possession after receipt of occupation certificate. Further respondent is directed to execute conveyance deed



within 90 days after handing over of valid legal possession to complainants.

(ii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.

(iii) 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., 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

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

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



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



.....
NADIM AKHTAR
[MEMBER]